
STATUTORY RULES OF NORTHERN IRELAND

2010 No. 22

HEALTH AND PERSONAL SOCIAL SERVICES

The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010

Made - - - - *28th January 2010*
Coming into operation *26th February 2010*

The Department of Health, Social Services and Public Safety, with the consent of the Department of Finance and Personnel, makes the following Regulations in exercise of the powers conferred by Articles 12(1), (2), 14(1), (2) and (3) and 19 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972⁽¹⁾.

In accordance with section 12(4) of that Order, the Department has consulted with representatives of persons likely to be affected by these Regulations, as appeared to the Department to be appropriate.

PART 1

INTRODUCTORY

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010.

(2) These Regulations shall come into operation on 26th February 2010 and, save as provided in paragraphs (3) and (4), shall have effect from 1st October 2009.

(3) The following regulations shall have effect from 1st April 2008—

(a) regulation 7;

- (b) regulation 8;
 - (c) regulation 19(4) insofar as it relates to new sub-paragraph (11)(a) of regulation 15 of the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008(2);
 - (d) regulation 62;
 - (e) regulation 87(2) insofar as it relates to new sub-paragraph (2)(b) of regulation 212 of the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008;
 - (f) regulation 107.
- (4) The following regulations shall have effect from 1st April 2009—
- (a) regulation 3;
 - (b) regulation 4(a);
 - (c) regulation 14;
 - (d) regulation 16(b) and (d);
 - (e) regulation 33(2);
 - (f) regulation 56(3) and (5)(b);
 - (g) regulation 74(2).

PART 2

AMENDMENT OF THE HEALTH AND PERSONAL SOCIAL SERVICES (SUPERANNUATION) REGULATIONS (NORTHERN IRELAND) 1995

Interpretation of Part 2

2. The Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995(3) shall be amended as provided by regulations 3 to 12.

3. In the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995—

- (a) any reference to the Agency shall be construed as a reference to the Regional Business Services Organisation (RBSO) established under section 14(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009(4); and
- (b) any reference to a Health and Social Services Board shall be construed as a reference to the Regional Health and Social Care Board (RHSCB) established under section 7(1) of the Health and Social Care (Reform) Act 2009.

Amendment of regulation 2

4. In regulation 2 (Interpretation)—

- (a) in the definition of “employing authority”—

- (i) for,—

- “(h) as regards a person who is subject to a direction made under Article 12(6) of the Superannuation (Northern Ireland) Order 1972 and subject

(2) S.R. 2008 No. 256 as amended by S.R. 2009 Nos. 65 and 188

(3) 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; S.R. 2008 Nos. 96, 130 and 163; S.R. 2009 Nos. 65 and 188

(4) 2009 c. 1 (N.I.)

to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations”; substitute—

“(k) as regards a person who is subject to a direction made under Article 12(6) of the Superannuation (Northern Ireland) Order 1972 and subject to such modifications to these Regulations as the Department may in any particular case direct, any employer of such a person that the Department agrees to treat as an employing authority for the purposes of these Regulations”;

(ii) after paragraph (k) add—

“(l) “Health and Social Care Trust (HSC Trust)” established under section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(m) “Regional Health and Social Care Board (RHSC Board)” established under section 7(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(n) “Regional Business Services Organisation (RBSO)” established under section 14(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(o) “Patient and Client Council (PCC)” established under section 16(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(p) “Regional Agency for Public Health and Social Wellbeing (RAPHSW)” established under section 12(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;”

(iii) omit paragraphs (a), (b) and (c);

(b) in the definition of “superannuable employment”, after “the scheme”, insert “in accordance with this Section”;

(c) for the definition of “scheme” substitute—

““Scheme” means the Health and Social Care (Pension Scheme) the rules of which are set out in these regulations and the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008;”.

Amendment of regulation 13B

5.—(1) Regulation 13B(2) (Re-assessment of ill-health condition determined under regulation 13A) is amended as provided by paragraphs (2) and (3).

(2) At the end of sub-paragraph (c), omit “and”;

(3) At the end of sub-paragraph (d), insert—

“; and

(e) the member is not a 2008 Section Optant within the meaning of regulation 136A or 260A of the 2008 Section of the Scheme (application of Chapter 10 of Part 2 and Chapter 10 of Part 3, respectively) who has become entitled to a tier 2 ill-health pension under regulation 52 or 182 of that Section (which deals with early retirement on ill-health (active members and non contributing members)).”.

Amendment of regulation 25

6. For paragraph (3) of regulation 25 (Member dies after pension becomes payable), substitute—
- “(3) For the purposes of paragraph (2), no account will be taken of any reduction to the member’s pension under regulation 85 unless—
- (a) the member is a 2008 Section Optant within the meaning of regulation 136A or regulation 260A of the 2008 Section of the Scheme; and
 - (b) on the date of the member’s death the member is an active or non-contributing member of that section.”.

Amendment of regulation 31E

7. In paragraph (1) of regulation 31E (Surviving nominated partner’s pension) for “who has superannuable service”, substitute “whose superannuable employment ceases”.

Amendment of regulation 34

8. In paragraph (2A)(b) of regulation 34 (Member dies in superannuable employment), omit “the member’s”.

Amendment of regulation 35

9. For paragraph (2) of regulation 35 (Member dies after pension becomes payable), substitute—
- “(2) Subject to paragraphs (2A) and (8)—
- (a) the allowance will be calculated as described in whichever of paragraphs (3) or (4) apply; and
 - (b) where the member was, on the date of the member’s death—
 - (i) not a 2008 Section Optant within the meaning of regulation 136A or regulation 260A of the 2008 Section of the Scheme (application of Chapter 10 of Part 2 and Chapter 10 of Part 3, respectively), whose pensionable service—
 - (aa) equalled, or exceeded, 10 years, as a proportion of the amount of the member’s pension based on that service;
 - (bb) was less than 10 years, as a proportion of the amount the member’s pension would have been if it had been based on 10 years pensionable service,
 - (ii) such a 2008 Section Optant, as a proportion of the amount of the member’s pension.”.

New regulation 97A

10. After regulation 97 (Accounts and actuarial reports) insert—

“Cost Sharing

97A.—(1) The actuarial report referred to in regulation 97 (Accounts and actuarial reports) must specify—

- (a) a recommended contribution rate (RCR); and
- (b) a projected yield from members' contributions (PYM).

(2) Where the member contribution rate or benefits in England and Wales provided by the National Health Service Pension Scheme Regulations 1995⁽⁵⁾ have changed as a consequence of determinations made by the Secretary of State under regulation U4 of those Regulations, the actuarial report referred to in 97 (Accounts and actuarial reports) must also specify—

- (a) a recommended contribution rate (RCRI), as if the changes in England and Wales had been applied in Northern Ireland; and
- (b) a projected yield from members' contributions (PYMI) as if the changes in England and Wales had been applied in Northern Ireland.

(3) Where the member contribution rate or benefits in England and Wales provided by the National Health Service Pension Scheme Regulations 1995 have changed as a consequence of determinations made by the Secretary of State under regulation U4 of those Regulations, the initial employers' contribution rate (IECR) shall be calculated as RCRI minus PYMI.

(4) Where the member contribution rate or benefits in England and Wales provided by the National Health Service Pension Scheme Regulations 1995 have not changed as a consequence of determinations made by the Secretary of State under regulation U4 of those Regulations, the initial employers' contribution rate (IECR) shall be calculated as RCR minus PYM.

(5) Subject to paragraph (6) employing authorities shall pay contributions under regulation 11 (Contributions by employers) at the rate of IECR.

(6) In the event that IECR is more than one percentage point greater or less than the rate payable by employing authorities in England and Wales under regulation U4 of the National Health Service Pension Scheme Regulations 1995, for the same period, the relevant member contribution rates and employer contribution rates will be subject to review by the Department having—

- (a) taken advice from the Scheme actuary; and
- (b) consulted with the Department of Finance and Personnel and such employee and employer representatives as appear to the Department to be appropriate.”.

Amendment of Schedule 2

11.—(1) Schedule 2 (Medical and dental practitioners) is amended as provided by paragraphs (2) and (3).

(2) In paragraph 9 (Officer service treated as practitioner service)—

- (a) in sub-paragraph (1), omit “principal” (twice);
- (b) in sub-paragraph (3)(a), omit “principal”;
- (c) in sub-paragraph (3)(b), omit “principal”;
- (d) in sub-paragraph (5A)(a), omit “principal”;
- (e) after sub-paragraph (5B), add—

“(5C) If—

- (a) any part of the period of a member’s officer service is treated as practitioner service for the purposes of sub-paragraph (1) or (5A) (“the converted service”) and;

⁽⁵⁾ S.I. 1995/300, amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280, 2008/654 and 2263 and 2009/381, and modified by S.I. 1996/971

- (b) any part of the converted service has been credited to the member as a result of a transfer-in under regulations 61 or 62 (but not regulation 81(2)) (“the converted service credit”),
- the amount of superannuable pay deemed to be received in respect of the converted service credit will be calculated in accordance with paragraph 18.”;
- (f) in sub-paragraph (8), for “been a principal practitioner” substitute “officer service before first becoming a practitioner”.
- (3) In paragraph 11A (Practitioners with benefits from both practitioner service and officer service) after sub-paragraph (5), add—
- “(6) A member who, before commencing the member’s final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—
- (a) that officer service is preceded by an earlier period of practitioner service; and
- (b) some or all of the officer service is not concurrent with the practitioner service,
- shall, if it would be more favourable, be entitled to receive a separate pension and retirement lump sum for such part of that officer service that is not concurrent with the member’s practitioner service.
- (7) The amounts of pension and retirement lump sum referred to in sub-paragraph (6)—
- (a) shall be subject to a 1.5% increase for each whole year or part of a year within the increment period;
- (b) that increase shall be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act (Northern Ireland) 1971(6); and
- (c) that increase shall be effective immediately before the pension and lump sum become payable under these Regulations.
- (8) The increment period referred to in sub-paragraph (7) shall—
- (a) begin with the day immediately following the day on which the member’s service as an officer referred to in sub-paragraph (6) ceased for the last time; and
- (b) end with the day immediately before the pension and retirement lump sum become payable under these Regulations.”.

Schedules

12. Schedule 1 shall have effect.

PART 3

AMENDMENT OF THE HEALTH AND SOCIAL CARE (PENSION SCHEME) REGULATIONS (NORTHERN IRELAND) 2008

Interpretation of Part 3

13. The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008(7) shall be amended as provided by regulations 14 to 105.

(6) 1971 c. 35 (N.I.)

(7) S.R. 2008 No. 256 as amended by S.R. 2009 Nos 65 and 188.

14. In the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008—

- (a) any reference to the Agency shall be construed as a reference to the Regional Business Services Organisation (RBSO) established under section 14(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009; and
- (b) any reference to a Health and Social Services Board shall be construed as a reference to the Regional Health and Social Care Board (RHSCB) established under section 7(1) of the Health and Social Care (Reform) Act 2009.

Amendment of regulation 5

15. In paragraphs (1) and (3) of regulation 5 (Provision of information relevant for tax purposes), for “these Regulations” substitute “this Section of the Scheme”.

Amendment of regulation 6

16. In Regulation 6 (Interpretation: general)—

- (a) at the appropriate place in the alphabetical order, insert—
 - ““2008 Section Optant” has the meaning given in regulation 136A;
 - “the 1995 Section” means the section of the Health and Social Care Pension Scheme as set out in the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;
 - “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000⁽⁸⁾;
 - “pension debit member” means a member of this Section of the Scheme whose benefits, or future benefits, under this Scheme have been reduced under Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999⁽⁹⁾ (Reduction under pension sharing order following divorce or nullity of marriage), whether before or after the member became a member of this Section of the Scheme;”;
- (b) in the definition of “employing authority”—
 - (i) after paragraph (i) add—
 - “(j) “Health and Social Care Trust (HSC Trust)” established under section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽¹⁰⁾;
 - (k) “Regional Health and Social Care Board (RHSCB)” established under section 7(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
 - (l) “Regional Business Services Organisation (RBSO)” established under section 14(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
 - (m) “Patient and Client Council (PCC)” established under section 16(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
 - (n) “Regional Agency for Public Health and Social Wellbeing (RAPHSW)” established under section 12(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009”;
 - (ii) omit the definitions at paragraphs (a), (b) and (c);

⁽⁸⁾ 2000 c. 7

⁽⁹⁾ 1999 No. 3147 (N.I. 11)

⁽¹⁰⁾ 2009 c. 1 (N.I.)

- (c) omit the definition of “the HPSS Superannuation Scheme 1995”;
- (d) in the definition of “Host Board” from the full out words to the end substitute—
 - “means the Regional Health and Social Care Board (RHSCB) and such a person shall be deemed to be employed by the RHSCB for the purposes of this Part, except where regulation 31(7) or (8) applies;
 - (d) in respect of a dentist performer means the RHSCB.”
- (e) for the definition of “the Scheme”, substitute—
 - ““the Scheme” means the Health and Social Care Pension Scheme the rules of which are set out in these regulations and the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;”.

Amendment of regulation 7

- 17.** In paragraph (1) of regulation 7 (Meaning of “pensionable service”)—
- (a) at the end of sub-paragraph (b), omit “and”;
 - (b) after sub-paragraph (c), add—
 - “; and
 - (d) any period of pensionable service the member is entitled to count under Chapter 10 of this Part.”.

Amendment of regulation 10

- 18.** In paragraph (1) of regulation 10 (Meaning of “qualifying service”)—
- (a) at the end of sub-paragraph (d), omit “and”;
 - (b) after sub-paragraph (f), insert—
 - “; and
 - (g) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 10 of this Part.”.

Amendment of regulation 15

- 19.—(1)** Regulation 15 (Meaning of “reckonable pay”: general) is amended as provided by paragraphs (2) to (4).
- (2) In paragraph (2), after “19”, insert “, 136G and 136I to 136K”.
 - (3) In the definition of “IRP” in paragraph (3), after “paragraph”, insert “(4),”.
 - (4) After sub-paragraph (10), add—
 - “(11) For the purposes of this regulation, pensionable service does not include—
 - (a) any period of pensionable service that a member is entitled to count under Chapter 6 of this Part unless the transfer value payment in respect of that service is accepted from a corresponding 2008 scheme;
 - (b) any period of pensionable service that a Section 2008 Optant is entitled to count under—
 - (i) regulation 136C,
 - (ii) regulation 136E, or
 - (iii) regulation 136M.”.

Amendment of regulation 21

- 20.** In paragraph 5 of regulation 21 (Eligibility: general)—
- (a) in sub-paragraphs (b) and (c) for “HPSS Superannuation Scheme 1995” substitute “the 1995 Section”;
 - (b) for sub-paragraph (e)(ii), substitute—
 - “(ii) became a deferred member of that Section on leaving that employment and has not since become a pensioner member of that Section between the date of leaving that employment and joining this Section of the Scheme, and”.

New regulation 21A

- 21.** After regulation 21 (Eligibility: general), insert—

“Eligibility: transitional

21A

- (1) A person is eligible to be an active member of this Section of the Scheme if—
 - (a) the Department has accepted that person’s option to join this Section of the Scheme under Chapter 10 of this Part; and
 - (b) that person is not prevented by regulation 22, 23 or 26 from so joining or continuing to be such an active member.
- (2) If a person referred to in paragraph (1)—
 - (a) is entitled to a tier 1 ill-health pension under regulation 13A(3)(a) of the 1995 Regulations (Ill health pension on early retirement); and
 - (b) as the result of a determination made by the Department under regulation 13B(3) of those Regulations (Re-assessment of ill health condition determined under regulation 13A), that person becomes entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension,that person shall cease to be eligible to be an active member of this Section of the Scheme from the date the Department makes that determination.”.

Amendment of regulation 31

- 22.** After paragraph (6) of regulation 31 (Contributions by employing authorities: general), add—

- “(7) If a non-GP provider is—
- (a) an employing authority which is a GMS practice or an APMS contractor; or
 - (b) a shareholder in such an employing authority,

that non-GP provider must pay contributions, under this regulation to the Host Board.

This is subject to paragraph (8).

- (8) If a non-GP provider is a shareholder or partner in one or more employing authority referred to in paragraph (7), each employing authority must pay contributions under this regulation on any pensionable earnings it pays to the non-GP provider or, as the case may be, on the non-GP provider’s share of the partnership profits, to the Host Board.”.

Amendment of regulation 34

- 23.** After paragraph (8) of regulation 34 (Member’s option to pay additional periodical contributions to purchase additional pension), add—

“(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.”.

Amendment of regulation 36

24. After paragraph (6) of regulation 36 (Member’s option to pay lump sum contribution to purchase additional pension), add—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.”.

Amendment of regulation 37

25. After paragraph (5) of regulation 37 (Payment of additional lump sum contributions by employing authority), add—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.”.

Amendment of regulation 40

26.—(1) Regulation 40 (Effect of payment of additional contributions under this Chapter) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (3), after—

(a) “(members' retirement benefits)” insert “or Chapter 10 of this Part”;

(b) “49” insert “and 136U”.

(3) After paragraph (10), add—

“(11) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.”.

Amendment of regulation 42

27. After paragraph (5) of regulation 42 (Effect of part payment of periodical contributions), add—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.”.

Amendment of regulation 45

28. After paragraph (6) of regulation 45 (Normal retirement pensions), add—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.”.

Amendment of regulation 47

29. After paragraph (4) of regulation 47 (Late payment of pension with actuarial increase), add—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136U.”.

Amendment of regulation 48

30. After paragraph (4) of regulation 48 (Early payment of pensions with actuarial reduction), add—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.”.

Amendment of regulation 49

31. After paragraph (9) of regulation 49 (Partial retirement (members aged at least 55)) add—

“(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.”.

Amendment of regulation 52

32.—(1) Regulation 52 (Early retirement on ill-health (active members and non-contributing members)) is amended as provided by paragraphs (2) to (4).

(2) For paragraph (5)(b), substitute—

“(b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if—

- (i) the member’s pensionable service before and after the break is treated separately under regulation 110, or
- (ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 136G.”.

(3) In paragraph (17) for the definition of “permanently” substitute—

““permanently” means—

- (a) the period until age 65; and
- (b) in the case of a 2008 Section Optant who, before joining this Section of the Scheme, was assessed by a medical adviser as being—
 - (i) permanently incapable of efficiently discharging their duties for the purposes of regulation 13A(2)(b)(i) of the 1995 Regulations (Ill health pension on early retirement), that Optant shall be deemed to be permanently incapable of discharging the duties of the Optant’s employment efficiently for the purposes of paragraph (2) (a),
 - (ii) permanently incapable of regular employment of like duration for the purposes of regulation 13A(2)(b)(ii) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a);”.

(4) After paragraph (17), add—

“(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 136L and 136N to 136R.”.

Amendment of regulation 53

33.—(1) Regulation 53 (Re-assessment of entitlement to an ill-health pension determined under regulation 52) is amended as provided by paragraphs (2) and (3).

(2) For paragraph (2), substitute—

“(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Department for a review of whether the member subsequently meets the condition in regulation 52(3)(a) if—

- (a) the member makes the application in writing—
 - (i) within three years of the date of issue of the notice, or
 - (ii) in the case of a member who engages in further HSC employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
 - (i) relating to whether the condition in regulation 52(3)(a) is satisfied at the date of the Department’s review, and

- (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 52(2)(a);
 - (c) no previous application for a review has been made under this paragraph; and
 - (d) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 113.”.
- (3) After paragraph (3), add—
- “(4) In the case of a 2008 Section Optant, this regulation is subject to regulations 136P and 136Q.”.

Amendment of regulation 54

34. After paragraph (9) of regulation 54 (Early retirement on ill-health (deferred members)), add—
- “(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.”.

Amendment of regulation 55

35. After paragraph (8) of regulation 55 (Early retirement on termination of employment by employing authority), add—
- “(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.”.

Amendment of regulation 58

36. After paragraph (9) of regulation 58 (General option to exchange part of pension for lump sum), add—
- “(10) In the case of a 2008 Section Optant, this regulation is subject to paragraph (4) of regulation 136H and regulation 136L.”.

Amendment of regulation 60

37. For regulation 60 (Reduction in pension debit member’s benefits), substitute—

“Reduction in pension debit member’s benefits

60

- (1) 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.
- (2) In the case of a 2008 Section Optant, this regulation is subject to paragraph (2) of regulation 136H.”.

Amendment of regulation 68

38. After paragraph (2) of regulation 68 (Meaning of “surviving nominated partner”), add—
- “(3) In the case of a 2008 Section Optant, this regulation is subject to regulation 136T.”.

Amendment of regulation 69

- 39.—(1) Regulation 69 (Amount of pensions under regulation 67: active and non-contributing members) is amended as provided by paragraphs (2) to (4).

(2) At the end of paragraph (2), insert (as full out words) “Sub-paragraph (b) is subject to paragraph (7).”.

(3) At the end of paragraph (3), insert (as full out words) “This is subject to paragraph (7).”.

(4) After paragraph (6), add—

“(7) For the purposes of paragraphs (2)(b) and (3) any increase under—

(a) regulation 47; or

(b) regulation 136U,

is ignored.”.

Amendment of regulation 70

40.—(1) Regulation 70 (Amount of pensions under regulation 67: pensioner members) is amended as provided by paragraphs (2) and (3).

(2) For paragraph (3), substitute—

“(3) For the purposes of paragraph (1) any reduction in the rate of the member’s pension under—

(a) Chapter 8 of this Part;

(b) regulation 58; or

(c) regulation 136L,

is ignored.

(3A) For the purpose of paragraph (2)—

(a) any reduction in the rate of the member’s pension under—

(i) regulation 48,

(ii) regulation 58, or

(iii) regulation 136L; and

(b) any increase in the rate of the member’s pension under—

(i) regulation 47, or

(ii) regulation 136U,

is ignored.”.

(3) Omit paragraph (8).

Amendment of regulation 73

41. For paragraph (3)(b) of regulation 73 (Re-employed pensioners: adult survivor pensions in initial period), substitute—

“(b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of pension under—

(i) Chapter 8 of this Part,

(ii) regulation 58, and

(iii) regulation 136L.”.

Amendment of regulation 76

42. In regulation 76 (Amount of children’s pension under regulation 74: deceased active members and deceased non-contributing members), at the end of paragraph (4) insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 136X.”.

Amendment of regulation 77

43.—(1) Regulation 77 (Amount of children’s pension under regulation 74: deceased pensioner members) is amended as provided by paragraphs (2) and (3).

(2) At the end of paragraph (3) insert (as full out words), “In the case of a 2008 Section Optant, this is subject to regulation 136X.”.

(3) For paragraph (8), substitute—

“(8) For the purposes of paragraphs (1) and (2), any reduction in the member’s pension under regulation 58 and regulation 136L will be ignored.”.

Amendment of regulation 78

44. In regulation 78 (Amount of children’s pension under regulation 74: deceased deferred members), at the end of paragraph (3) insert (as full out words), “In the case of a 2008 Section Optant, this is subject to regulation 136X.”.

Amendment of regulation 83

45.—(1) Regulation 83 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 49 employments)) is amended as provided by paragraphs (2) to (4).

(2) At the end of paragraph (1) insert (as full out words), “In the case of a 2008 Section Optant, this is subject to regulation 136W.”.

(3) For paragraph (2)(b), substitute—

“(b) an amount equal to twice the member’s reckonable pay by reference to which the pension was calculated, less the aggregate of—

(i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 58, and

(ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 136L.”.

(4) For paragraph (6), substitute—

“(6) The reference in paragraph (2)(a) to the annual rate of the member’s pension is to the member’s pension after it has been reduced to take account of—

(a) the exercise by the member of an option under regulation 58; and

(b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 136L.”.

Amendment of regulation 84

46.—(1) Regulation 84 (Amount of lump sum: dual capacity members (disregarding regulation 49 employments)) is amended as provided by paragraphs (2) and (3).

(2) At the end of paragraph (2), insert (as full out words) “This is subject to paragraph (4).”.

(3) After paragraph (3), add—

“(4) In the case of a 2008 Section Optant—

- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 136L; and
- (b) the amount of the Optant's reckonable pay for the purposes of paragraph (2)(b)(ii) shall be reduced by the aggregate of—
 - (i) the amount of the lump sum paid to the Optant under regulation 136L, and
 - (ii) the lump sum under regulation 58 referred to in paragraph (2)(b)(ii)."

Amendment of regulation 85

47.—(1) Regulation 85 (Amount of lump sum; dual capacity members; members with pensions under regulation 49) is amended as provided by paragraphs (2) and (3).

(2) At the end of paragraph (2) insert (as full out words), "In the case of a 2008 Section Optant, this is subject to regulation 136W."

(3) For paragraph (4) substitute—

"(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the reckonable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation 49 was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulation 49 as a result of the member exercising the option under regulation 58; and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 136L."

Amendment of regulation 87

48. After paragraph (12) of regulation 87 (Payment of lump sums or pensions on death), add—
“(13) In the case of a 2008 Section Optant, this regulation is subject to regulation 136T.”.

Amendment of regulation 98

49.—(1) Regulation 98 (Calculating amounts of transfer value payments) is amended as provided by paragraphs (2) and (3).

(2) For paragraph (4), substitute—

"(4) In paragraph (3) "minimum transfer value" means—

- (a) in the case of a person other than a 2008 Section Optant, the sum of—
 - (i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated, and
 - (ii) any contributions paid by the person under Chapter 3 of this Part as a result of which the person is entitled to count such service;
- (b) in the case of a 2008 Section Optant, the sum of—
 - (i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated,

- (ii) any contributions paid by the person under Chapter 3 of this Part as a result of which the person is entitled to count such service, and
- (iii) the aggregate of any—
 - (aa) transfer value payments that have been made to the 1995 Section in respect of the Optant;
 - (bb) any contributions paid by the Optant under regulation 10 of the 1995 Regulations (Contributions by members) in respect of superannuable employment in that Section on or before 31st March 2008; and
 - (cc) any payments made by the Optant under regulation 67 of the 1995 Regulations (Right to buy additional service) for the purchase of additional service,which entitle the Optant to count, under Chapter 10 of this Part, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.”.

(3) After paragraph (5), add—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.”.

Amendment of regulation 100

50. After paragraph (4) of regulation 100 (Right to apply for acceptance of transfer value payment from another scheme), add—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.”.

Amendment of regulation 102

51. After paragraph (6) of regulation 102 (Acceptance of transfer value payments), add—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.”.

Amendment of regulation 103

52. After paragraph (6) of regulation 103 (Calculation of transferred-in pensionable service), add—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.”.

Amendment of regulation 104

53. After paragraph (4) of regulation 104 (Meaning of “capped transferred-in service”), add—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.”.

Amendment of regulation 132

54. In paragraph (5)(a) of regulation 132 (Interest on late payment of benefits and refunds of contributions), after “(members' retirement benefits)” insert “or a lump sum under regulation 136L”.

Insertion of Chapter 10

55. After Chapter 9 of Part 2 (Miscellaneous and supplementary provisions), add—

“CHAPTER 10

2008 Section Optants

Application of Chapter 10 of this Part

136A

(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the Scheme on the basis set out in this Chapter, including persons who—

- (a) return to HSC employment in respect of which there is a liability to pay contributions to the scheme in accordance with regulation 10 of the 1995 Regulations (Contributions by members) within a period of less than 5 years beginning with the day on which they last left such employment (whether or not that period includes 1st October 2009);
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation 7(3) of the 1995 Regulations (Restrictions on membership).

This Chapter does not apply to persons if—

- (i) that person is an active member of the 1995 Section by virtue of regulation 13(11) of the 1995 Regulations (Early retirement pension (ill health)), or
- (ii) that member is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(2) In these Regulations a member of this Section of the Scheme to whom this Chapter applies is referred to as a “2008 Section Optant”.

Options for 1995 Section members to join this Section of the Scheme under Chapter 10 of this Part

136B

(1) A person who by virtue of that person’s employment—

- (a) was an active member of the 1995 Section—
 - (i) on, or after, 1st October 2009, and
 - (ii) on the day that person’s option to join this Section of the Scheme was received by the Department; and
- (b) would be eligible to join this Section of the Scheme if that person met the condition in regulation 21(3)(a) (which requires that the person’s employment began on or after 1st April 2008),

may join this Section of the Scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the Scheme if that person opts to do so.

(3) The option may only be exercised by giving notice in writing to the Department—

- (a) in such form as the Department requires; and
- (b) before the date the Department specifies for that purpose in the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme issued to that person (“the comparative statement”).

This is subject to paragraphs (4) and (9) and regulation 136S.

- (4) For the purpose of paragraph (3)—
- (a) the date specified by the Department in the comparative statement shall be a date that is at least four months later than the comparative statement issue date; and
 - (b) the notice shall be—
 - (i) irrevocable, and
 - (ii) treated as having been given on the date on which it is received by the Department.
- (5) The option shall be effective from the first day of the member's superannuable employment in the 1995 Section falling on or after 1st April 2008, and—
- (a) the person shall be treated as if that person had been a member of this Section of the Scheme from that date;
 - (b) the member's service both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section shall count under this Section of the Scheme only to the extent that it would have counted had the member been an active member of this Section of the Scheme from that date.

This is subject to paragraph (12).

(6) If contributions due from the member under Chapter 3 of this Part in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member's pensionable pay in such manner and at such rate as the Department requires.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the Scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Department may extend the time limit in paragraph (3) if the Department considers that the person has not had a reasonable opportunity to consider whether to exercise the option.

(9) The Department may accept an option to join the 2008 Section that is received after the person ceases to be an active member of the 1995 Section if—

- (a) a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme was issued to the person whilst that person was an active member of the 1995 Section;
 - (b) but for the exercise of the option the person would otherwise become entitled to the immediate payment of benefits under Part III of the 1995 Section;
 - (c) the person has provided the Department with a notice in writing in such form as the Department may require that benefits are not to be paid from the 1995 Section and has not revoked that notice; and
 - (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.
- (10) A person may revoke a notice given for the purposes of paragraph (9)(c)—
- (a) at any time;
 - (b) in writing on the form provided by the Department for that purpose.
- (11) A person who has revoked a notice in accordance with paragraph (10) may not provide a further notice under paragraph (9).

(12) A person exercising an option under this regulation who is entitled to a pension under regulation 13A of the 1995 Regulations (Ill health pension on early retirement) may count as qualifying service for the purpose of this Section of the Scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count under regulation 5 of the 1995 Regulations (Meaning of qualifying service) in determining their entitlement to that pension.

(13) For the purposes of paragraphs (4) and (9) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent (whether by electronic communication or otherwise)—

- (a) to the person; or
- (b) to the person's employing authority.

(14) Where paragraph 13(b) applies the person must have a period equal to at least three months ending on the date specified by the Department in accordance with paragraph (4) (a) in which to opt to join this Section of the Scheme.

This is subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8).

Transfer of service from the 1995 Section

Service credited from the 1995 Section

136C

(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the Scheme; and
- (b) is not entitled to a pension under regulation 13A of the 1995 Regulations (ill-health pension on early retirement),

is entitled to count the following service under this Section of the Scheme.

(2) The member may count as qualifying service a period equal in length to the period of qualifying service up to, and including, 31st March 2008 which the member was entitled to count under the 1995 Section (but not exceeding 45 years).

(3) The period of pensionable service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count is a period equal in length to the period of superannuable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation 4 of the 1995 Regulations (Meaning of superannuable service).

This is subject to paragraph (6) and regulation 136M.

(4) The period of pensionable service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count is a period equal in length to the superannuable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation 4 of the 1995 Regulations calculated by multiplying that period of service (specified in days) by the factor specified in paragraph (5) applicable to that case.

This is subject to paragraph (6) and regulation 136M.

(5) The factor referred to in paragraph (4) is the factor specified by the Department for that purpose.

(6) For the purposes of paragraphs (3) and (4) the superannuable service which the 2008 Section Optant was entitled to count under regulation 4 of the 1995 Regulations—

- (a) shall not include any superannuable service the Optant was entitled to count under regulation 4(1)(e) of those Regulations;

- (b) shall be calculated without regard to paragraph (5) of regulation 76 of those Regulations (Mental Health Officers); and
- (c) where the Optant is entitled to count any part-time superannuable service in the 1995 Section, shall be calculated in accordance with regulation 78 of those Regulations (Part-time employment).

(7) When a 2008 Section Optant becomes a member of this Section of the Scheme under this Part all rights in respect of that Optant under the 1995 Section are extinguished.

Treatment of Additional Pension

136D

(1) This regulation applies to a 2008 Section Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension (“OPAP”) under regulation 73A or 73C or whose employing authority had done so under regulation 73D of those Regulations (which deal with the purchase of additional pension by periodical contributions and lump sum).

(2) Where paragraph (1) applies, the amount of additional pension that will count under this Section of the Scheme shall be calculated in accordance with—

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation 73G of the 1995 Regulations (Effect of payment of additional contributions under this Part);
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation 73F of those Regulations (Cancellation and cessation of options under regulation 73A).

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 40 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation 73G of the 1995 Regulations where the person’s chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation 73G of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Department shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

Paragraph (3)(b) is subject to paragraph (9).

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 42 shall be equal to the amount of additional pension—

- (a) that was purchased in the 1995 Section under regulation 73H of the 1995 Regulations, where the person’s chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation 73H of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Department shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

Paragraph (4)(b) is subject to paragraph (9).

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the Scheme shall do so from the effective date specified in paragraph (5) of regulation 136B.

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1); and
- (b) where at the effective date specified in paragraph (5) of regulation 136B—

- (i) that person—
 - (aa) was making additional contributions in accordance with an OPAP exercised under regulation 73A of the 1995 Regulations; or
 - (bb) had applied to make, but had not yet begun making, additional contributions under regulation 73A of the 1995 Regulations; or
 - (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation 73C of the 1995 Regulations, or
- (ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation 73D of the 1995 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation 73A of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section of the Scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 34, 36 or 37 would apply in that case.

(8) Where paragraph (6) applies and the person's chosen birthday referred to in regulation 73A of the 1995 Regulations was 60, the OPAP referred to in that paragraph will apply in this Section of the Scheme—

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 34, 36 or 37 would apply in that case; and
- (b) after adjustment, having regard to the advice of the Scheme actuary, so that—
 - (i) the amount of the additional pension purchased in this Section of the Scheme is the same as that which would have been purchased in the 1995 Section, but
 - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the Scheme, reduce or (where appropriate) cease to be payable.

This is subject to paragraph (9).

(9) If paragraph (3)(b), (4)(b) or (8) applies and—

- (a) the amount of the additional pension calculated in accordance with paragraph (3)(b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 34, 36 or 37; or
- (b) the limit on the total increase in the member's pension referred to in regulation 34 will be exceeded by the amount of additional pension that counts in this Section of the Scheme in accordance with paragraph (8)(b)(i) notwithstanding any reduction in, or cessation of, additional contributions payable in accordance with paragraph (8)(b)(ii),

the total increase in the member's pension under this regulation, taken together with any other increase under regulations 34, 36 or 37—

- (i) will be subject to the limit on the total increase in the member's pension described in regulation 34, 36 or 37, and
- (ii) the amount of additional pension that counts in this Section of the Scheme in accordance with paragraphs (2) to (8) that exceeds that limit will be converted to pensionable service under regulation 7(1)(d), and in determining the amount of additional pension to be converted into pensionable service, the Department shall have regard to the advice of the Scheme actuary.

Treatment of Additional Service

136E

(1) A 2008 Section Optant—

- (a) who becomes a member of this Section of the Scheme; and
- (b) is buying or has already bought a period of additional service that counts as superannuable service under regulation 4(1)(e) of the 1995 Regulations (Meaning of superannuable service),

will be able to count as pensionable service in this Section of the Scheme the service referred to in whichever of paragraphs (5) or (6) apply to that Optant.

(2) That additional service referred to in paragraph (1) is—

- (a) any additional service bought under regulation 67 of the 1995 Regulations (Right to buy additional service) before the date that person's option to join this Section of the Scheme was received by the Department in accordance with regulation 136B; and
- (b) any additional service bought under regulations 22 or 23 of the Health Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984⁽¹¹⁾.

This is subject to paragraphs (3) and (4).

(3) The additional service referred to at paragraph (2)(a) will be calculated in accordance with—

- (a) paragraph (4), and as the case may be paragraph (8), of regulation 67 of the 1995 Regulations, in the case of an election that had ceased and was paid for in full by the date referred to in paragraph (2)(a);
- (b) paragraphs (1), (4) and (5) (but not (6)) of regulation 73 of the 1995 Regulations (Part payment for additional service or unreduced retirement lump sum), in the case of an election that had ceased but had only partially been paid for at that date; or
- (c) paragraphs (1), (4) and (5) (but not (6)) of regulation 73 of the 1995 Regulations, in the case of an election that remained in force immediately before that date.

Paragraph (3)(c) is subject to paragraph (7).

(4) The additional service referred to at paragraph (2)(b) will be calculated in accordance with whichever of—

- (a) paragraph (3) or (4)(b) of regulation 22; or
- (b) paragraph (1) or (3)(b) of paragraph 23,

of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984 applies to the Optant.

(5) The period of pensionable service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section of the Scheme is a period equal in length to the period of additional service calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) apply to the Optant.

(6) The period of pensionable service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section of the Scheme is the period found by—

- (a) first taking a period equal in length to the period of additional service (specified in days) calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies ("Period AS"); and

(11) S.R. 1984 No. 336

- (b) then multiplying Period AS by the factor specified by the Department for that purpose.
- (7) Where a member was buying additional service by means of additional contributions immediately before the date referred to in paragraph (2)(a), the member's—
 - (a) election to buy additional service will cease from that date; and
 - (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member's pensionable pay in accordance with regulation 136B(6) and (7).
- (8) For the purposes of calculating the Optant's benefits under this Section of the Scheme the pensionable service that the Optant is entitled to count under paragraph (5) or, as the case may be, paragraph (6) of this regulation will be added to the pensionable service the member is entitled to count under—
 - (a) regulation 136C(3), if the member is under age 60 on 1st October 2009; or
 - (b) regulation 136C(4), if the member is age 60 or over on that date.This is subject to regulation 136R.

Treatment of unreduced retirement lump sum

136F

- (1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person's option to join this Section of the Scheme was received by the Department in accordance with regulation 136B, had made an election under regulation 68 of the 1995 Regulations (Right to buy an unreduced lump sum) to—
 - (a) purchase an unreduced retirement lump sum for service before 25th March 1972; or
 - (b) buy additional survivor's pension for service before 6th April 1988,which satisfies any of the conditions in paragraph (2).
- (2) Those conditions are that the election—
 - (a) was paid for in full by the date referred to in paragraph (1);
 - (b) ceased before the date referred to in paragraph (1), but before completion of the additional contributions payable;
 - (c) was payable by additional contributions and remained in force immediately before the date referred to in paragraph (1); or
 - (d) was payable by deduction from the member's retirement lump sum.
- (3) If paragraph (1) applies, the election referred to in that paragraph will cease to be effective from 1st April 2008 and—
 - (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 136B(6) and (7);
 - (b) any liability to pay additional contributions under the election will cease from, and including, 1st April 2008; and
 - (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

Treatment of 2008 Section Optants to whom regulation 52(3) of the 1995 Regulations applied immediately before 1 April 2008

136G

- (1) This regulation applies to a 2008 Section Optant—
 - (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 4 and 5 of this Part; and
 - (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation 52(3) of the 1995 Regulations (Early leavers returning to superannuable employment).
- (2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—
 - (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 136C that relates to one or more periods of superannuable employment in the 1995 Section that occurred before a break of 12 months or more in such employment (“an earlier service credit”); and
 - (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 136C that relates to a period of superannuable employment in the 1995 Section that occurred after a break of 12 months or more in such employment.

This is subject to paragraph (3).

- (3) The Optant’s benefits in respect of an earlier service credit mentioned in paragraph (2) (a) shall be calculated—
 - (a) separately; and
 - (b) by reference to the final year’s superannuable pay calculated in accordance with regulation 3 of the 1995 Regulations (Meaning of superannuable pay and final year’s superannuable pay) in respect of that particular period.

This is subject to regulation 52(5)(b)(ii).

Pension debit members

136H

- (1) This regulation applies where, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member.
- (2) The amount of the reduction to be made to the Optant’s pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant’s pension under the 1995 Section calculated in accordance with Article 28 of the 1999 Order (Reduction of benefit) adjusted by the factor referred to in paragraph (3).
- (3) The factor referred to in paragraph (2) is the factor specified by the Department for that purpose.
- (4) The Department may, after taking advice from the Scheme actuary, make such modifications to—
 - (a) the Optant’s rights; and
 - (b) as to the form of the Optant’s benefits,

as the Department considers necessary for the purpose specified in paragraph (5).

(5) If in the opinion of the Department, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant's rights are subject for some or all of the benefits under this Section of the Scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Department may modify those benefits as described in paragraph (4).

Treatment of 2008 Section Optants to whom regulation 82 of the 1995 Regulations applied immediately before 1st April 2008

136I

(1) This regulation applies to a 2008 Section Optant—

- (a) whose earnings in respect of superannuable employment in the 1995 Section were reduced;
- (b) whose employer certified that the reduction in sub-paragraph (a) occurred in the circumstances described in paragraph (2) of regulation 82 of the 1995 Regulations (Members whose earnings are reduced);
- (c) who, subject to the agreement of the Department, would, on retirement or death, have become entitled to have a preserved pension calculated and paid as described in regulation 49 of the 1995 Regulations (Preserved pension) in respect of superannuable service in the 1995 Section before the Optant's earnings were reduced; and
- (d) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 4 and 5 of this Part.

(2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—

- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 136C that relates to one or more periods of superannuable service in the 1995 Section before that Optant's earnings were reduced as described in paragraph (1) ("a protected service credit"); and
- (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 136C that relates to a period of superannuable service in the 1995 Section after that Optant's earnings were reduced as described in paragraph (1).

This is subject to paragraph (3).

(3) The Optant's benefits in respect of a protected service credit mentioned in paragraph (2)(a) shall be calculated—

- (a) separately; and
- (b) by reference to the final year's superannuable pay calculated in accordance with regulation 3 of the 1995 Regulations (Meaning of superannuable pay and final year's superannuable pay) in respect of that particular period.

Restriction on pensionable pay used for calculating benefits in respect of capped Optant service

136J

(1) This regulation applies for determining the amount of an Optant’s pensionable pay for the purposes of calculating so much of any benefit under this Section of the Scheme as falls to be calculated by reference to capped Optant service.

(2) If an Optant’s pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).

(3) In this regulation “permitted maximum” means—

- (a) in relation to the tax year 2009-10, £123,600; and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).

(4) If the retail prices index for the month of September preceding the tax year 2010-11 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—

- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index; and
- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

(5) If the retail prices index for the month of September preceding the tax year 2010-11 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(6) In this regulation “capped Optant service” has the meaning given by regulation 136K.

Meaning of “capped Optant service”

136K

(1) This regulation applies if a 2008 Section Optant is entitled to count a period of service under this Section of the Scheme in accordance with—

- (a) regulation 136C; or
- (b) regulation 136E,

in respect of service in the 1995 Section that was, or included, capped service.

(2) For the purposes of this Part, the same proportion of the total service that the member is entitled to count under regulations 136C and 136E as the capped service bears to the whole of the Optant’s service in the 1995 Section up to and including 31st March 2008 is capped Optant service.

(3) For the purposes of paragraph (1) the Optant’s service in the 1995 Section was capped service so far as—

- (a) in the case of service before 6th April 2006, the Optant was an active member of the 1995 Section whose pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) of the Income and Corporation Taxes Act 1988; or
- (b) in the case of service on or after 6th April 2006, the Optant was an active member of the 1995 Section whose pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum under section 590C(2) of the Income and Corporation Taxes Act 1988 was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit, the Optant's remuneration in any tax year would have exceeded the amount of the limit.

Amount of pension and lump sum to be paid to a 2008 Section Optant

136L

(1) This regulation applies to a 2008 Section Optant who—

- (a) is entitled to an annual pension under Chapter 4 of this Part; or
- (b) is entitled to the payment of a transfer value under Chapter 6 of this Part in respect of the pension that has accrued to, or in respect of, that Optant under this Section of the Scheme.

(2) In the case of a 2008 Section Optant referred to in paragraph (1)(a)—

- (a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation apply to that Optant; and
- (b) the annual amount of pension referred to in paragraph (1)(a) to which the Optant is entitled shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.

(3) In the case of a 2008 section Optant referred to in paragraph (1)(b)—

- (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5); and
- (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.

(4) Except in the case of an Optant to whom paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).

This is subject to paragraphs (13) and (15).

(5) The amount of the lump sum shall be determined by—

- (a) applying the formula—

$$\frac{3 \times (\text{Relevant Service} \times \text{Reckonable Pay})}{(80 \times 365)}$$

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(6) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 48; and
- (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (7).

(7) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—

- (a) applying the formula—

$$\frac{3 \times (\text{Relevant Service} \times \text{Reckonable Pay} \times \text{Reduction Factor})}{(80 \times 365)}$$

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(8) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 49 for the first time; and
- (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (9).

(9) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—

- (a) applying the formula—

$$\frac{3 \times (\text{Specified Service} \times \text{Reckonable Pay} \times \text{Reduction Factor})}{(80 \times 365)}$$

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(10) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 49 for the first time, and
- (b) has attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (11).

(11) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (10) shall be calculated by—

- (a) applying the formula—

$$\frac{3 \times (\text{Specified Service} \times \text{Reckonable pay})}{(80 \times 365)}$$

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(12) In the case of an Optant—

- (a) who is a pensioner member as respects a pension payable under regulation 49 as described in paragraph (9)(a) of that regulation; and
- (b) who—
 - (i) subsequently exercises an option under that regulation for the second or final time, or
 - (ii) becomes entitled to any other pension under Chapter 4 of this Part in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of lump sum payable under this regulation shall be determined by the Department after taking advice from the Scheme actuary.

(13) If, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member the amount of the lump sum determined under this regulation shall be reduced by the amount calculated under paragraph (14) (“the pension debit reduction”).

(14) The amount of the pension debit reduction referred to in paragraph (13) shall be calculated by—

(a) applying the formula—

$$3 \times (1995 \text{ Section Pension Debit} \times \text{Increase Factor})$$

and

(b) rounding up the amount found in sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(15) If any part of an Optant’s benefit under this Section of the Scheme falls to be calculated by reference to capped Optant service under regulation 136J the determinations in this regulation shall apply separately in respect of—

(a) the pension to which the Optant is entitled in respect of the service that falls to be calculated by reference to capped Optant service; and

(b) the pension to which the Optant is entitled in respect of the service that does not fall to be calculated by reference to capped Optant service.

(16) For the purposes of this regulation—

“1995 Section Pension Debit” is the amount by which the Optant’s annual pension under the 1995 Regulations was to be reduced in accordance with Article 28 of the 1999 Order;

“annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the Scheme apart from this regulation, together with any increases payable under the Pensions (Increase) Act (Northern Ireland) 1971(12), calculated as at the time payment would first be due;

“Increase Factor” is the factor that would have applied to the 1995 Section Pension Debit for the purposes of Article 26 of the 1999 Order (Creation of pension debits and credits) if the Optant had become entitled to a pension under the 1995 Regulations—

(a) on the date that the Optant becomes entitled to a pension referred to in paragraph (1)(a); or

(b) on the day after the Optant’s last day of pensionable service if the Optant becomes entitled to the payment of a transfer value referred to in paragraph (1)(b);

“Reckonable Pay” is the Optant’s reckonable pay calculated under Chapter 1 of this Part;

“Reduction Factor” is the reduction factor that the Department, after taking advice from the Scheme actuary, determines would have applied to that Optant’s lump sum under regulation 17(7)(b) of the 1995 Regulations (Lump sum on retirement) if that Optant had become entitled to a pension calculated under regulation 16 of those Regulations (Early retirement pension (with actuarial reduction)) on the day he became entitled to a pension under regulation 48 or as the case may be regulation 49;

“Relevant Service” is a period (expressed in days), equal to the aggregate of—

- (a) the period of pensionable service that the Optant is entitled to count under regulation 136C; and
- (b) the period of pensionable service (if any) that the Optant is entitled to count under regulations 136E and 136R;

“Specified Service” is the amount of the Optant’s Relevant Service (expressed in days) multiplied by the specified percentage;

“Specified percentage” is the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 49(4)(a).

(17) In the case of an 2008 Section Optant whose benefits are subject to the modification provided in Part 4, this regulation is subject to regulation 260K(16).

Miscellaneous provisions

Transfers in: transitional provision

136M

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) commenced a period of superannuable employment in the 1995 Section on, or after, 1st April 2008; and
 - (b) within one year of the commencement of that employment, makes an application to transfer accrued rights to benefits to the 1995 Section under regulation 60 of the 1995 Regulations (Member’s right to transfer accrued rights to benefits to this Section of the Scheme).
- (2) If—
 - (a) the Department accepts the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation 60(4) of the 1995 Regulations; and
 - (b) that payment is received by the Department before the day on which the person’s option to join this Section of the Scheme is received,

the period of pensionable service that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4).

(3) If the transfer payment in respect of an application referred to in paragraph (1) is received by the Department on, or after, the day on which the person’s option to join this Section of the Scheme is received—

- (a) the Department may accept that payment under this Section of the Scheme—
 - (i) without requiring the Optant to make an application under regulation 100, and
 - (ii) subject to such other conditions as the Department may require; and
- (b) if the Department accepts the payment, the period of pensionable service that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4).

(4) The period of pensionable service that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, that Optant under this Section of the Scheme—

- (a) will be calculated in accordance with regulation 103; and
- (b) the starting day for the purposes of regulation 103(2) and (3) will be the day that the Optant's superannuable employment referred to in paragraph (1) commenced.

This is subject to paragraph (5).

(5) If the transfer value payment is accepted by the Department under the public sector transfer arrangements—

- (a) regulation 104 shall apply to the Optant in respect of the period of pensionable service that the Optant is entitled to count under this regulation; and
- (b) the reference in regulation 104(2) to the service that the member is entitled to count under regulation 102(2)(a) shall be read as a reference to the service the Optant is entitled to count under paragraph (4).

2008 Section Optants: Transitional Tier 2 ill-health pension

136N

(1) This regulation applies to a 2008 Section Optant who—

- (a) has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and
- (b) that form and supporting medical evidence was received by the Department before the date on which the Department received the Optant's option to join this Section of the Scheme.

(2) If the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 52(3) ("a tier 2 ill-health pension") within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received—

- (a) that Optant's service shall be increased by the enhancement period determined in accordance with paragraph (3) ("the transitional enhancement period"); and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 52(6).

This is subject to paragraph (5).

(3) In this regulation—

- (a) "the transitional enhancement period" means two-thirds of the Optant's assumed pensionable service; and
- (b) "the Optant's assumed pensionable service" means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching the age of 60.

This is subject to paragraph (4).

(4) If the transitional enhancement period determined under paragraph (3) is less than four years pensionable service, the transitional enhancement period by which the Optant's pensionable service is increased shall be the lesser of—

- (a) four years pensionable service; and

- (b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching the age of 60.

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 52 are to be read as references to the “transitional enhancement period” determined under this regulation.

Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section of the Scheme

136O

(1) This regulation applies to a 2008 Section Optant—

- (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 52; and
- (b) that form and supporting medical evidence is received by the Department before the end of the period of one year commencing on the day on which the Department received the Optant’s option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 52(3) (“a tier 2 ill-health pension”)—

- (a) that Optant’s service shall be increased by the enhancement period determined in accordance with whichever of paragraph (3) or (4) of regulation 136N applies to the Optant; and
- (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant’s service under regulation 52(6).

This is subject to paragraph (3).

(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 52 are to be read as references to the “transitional enhancement period” determined under this regulation.

Application of regulation 53 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

136P

(1) This regulation applies to a 2008 Section Optant—

- (a) who submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and
- (b) that form and supporting medical evidence was received by the Department before the date on which the Department received the Optant’s option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 52(2) (“a tier 1 ill-health pension”)—

- (a) within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received; and
- (b) immediately before joining this Section of the Scheme the Optant was notified under regulation 13B of the 1995 Regulations (Re-assessment of ill-health condition determined under regulation 13A) that the Optant may ask the Department to consider whether that Optant subsequently meets the tier 2 condition under that regulation,

that Optant shall be entitled to a re-assessment of entitlement to an ill-health pension determined under regulation 53 in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 52(3)(a) at the date of the Department's review, "permanently" shall mean until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 53, the Department determines that the Optant meets the condition in 52(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 52 but which shall be calculated in accordance with paragraph (5).

(5) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (4)

- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 136N apply to that Optant; and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 52(6).

This is subject to paragraph (6).

(6) In the case of an Optant to whom this regulation applies—

- (a) regulation 136N shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Department's determination under regulation 53" after "continued in service"; and
- (b) references to the "enhancement period" in regulation 52 are to be read as references to the "transitional enhancement period" determined under this regulation.

Application of regulation 53 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

136Q

(1) This regulation applies to a 2008 Section Optant—

- (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 52;
- (b) that form and supporting medical evidence was received by the Department before the end of the period of one year commencing on the day the Department received the Optant's option to join this Section of the Scheme; and

- (c) following a consideration of the form and medical evidence referred to in subparagraph (a)—
 - (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 52, and
 - (ii) at the time the Optant is awarded a pension under that regulation the Department gives the Optant notice in writing in accordance with regulation 53(1)(b) that the Optant’s case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 52(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 53, the Department determines that the Optant meets the condition in 52(3)(a), then as from the date on which that determination is made the Optant—
 - (a) ceases to be entitled to a tier 1 ill-health pension; and
 - (b) becomes entitled to a tier 2 ill-health pension under regulation 52 but which shall be calculated in accordance with paragraph (3).
- (3) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (2) —
 - (a) the Optant’s service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 136N applies to that Optant; and
 - (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant’s service under regulation 52(6).

This is subject to paragraph (4).
- (4) In the case of an Optant to whom this regulation applies—
 - (a) regulation 136N shall be read as if paragraph (3)(b) of that regulation included the words “from the date of the Department’s determination under regulation 53” after “continued in service”; and
 - (b) references to the “enhancement period” in regulation 52 are to be read as references to the “transitional enhancement period” determined under this regulation.

Transitional Provision: Treatment of additional service in respect of Optants retiring on the grounds of ill Health

136R

- (1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 136E.
- (2) If—
 - (a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation 13A of the 1995 Regulations (Ill-health pension on early retirement);
 - (b) that form and supporting medical evidence was received by the Department before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 67

of the 1995 Regulations (Paying for additional service and unreduced retirement lump sum by regular additional contributions); and

- (c) following a consideration of the form and medical evidence referred to in subparagraph (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 52 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

that Optant will not be entitled to count a period of pensionable service under regulation 136E and—

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect of that period of additional service shall be returned to the Optant in accordance with regulation 73(2) of the 1995 Regulations (Part payment for additional service or unreduced retirement lump sum, and

- (ii) paragraph (7) of regulation 136E will not apply.

(3) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation 13A of the 1995 Regulations;
- (b) that form and supporting medical evidence was received by the Department after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 72 of the 1995 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 52 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 136E, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4).

(4) The period of pensionable service that an Optant is entitled to count under this regulation shall be a period of service equal to the difference between—

- (a) the period of service the Optant is entitled to count under regulation 136E; and
- (b) the period of service the Optant elected to purchase under regulation 67 of the 1995 Regulations calculated in accordance with regulation 73(3) of the 1995 Regulations and as if the member had become entitled to a pension under regulation 13A of those Regulations on the day the Department received that Optant's option to join this Section of the Scheme.

(5) For the purposes of calculating the Optant's benefits under this Section of the Scheme, the pensionable service the Optant is entitled to count under paragraph (4) will be added to the service the member is entitled to count under regulation 136C(3).

Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 136B

136S

(1) This regulation applies to a person who—

- (a) on, or after, 1st October 2009—

- (i) is an active member of the 1995 Section, or
- (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation 65 of the 1995 Regulations (Absence because of illness or injury or certain types of leave);
- (b) has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and
- (c) that form and supporting medical evidence was received by the Department—
 - (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 136B, or
 - (ii) if such a statement has been issued to that person, before the date specified by the Department for the purposes of paragraph (3) of that regulation.
- (2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).
- (3) The option under paragraph (2) may only be exercised if—
 - (a) the person gives notice in writing to the Department in such form as it requires; and
 - (b) that notice is received by the Department within a period of four months starting with, where—
 - (i) that person is sent a written notification of the Department’s decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation 13A of the 1995 Regulations (“the first decision”), the date of that decision,
 - (ii) that person is sent a written notification of the Department’s decision in respect of the stage one dispute, (“a stage one decision”), the date of that decision,
 - (iii) that person is sent a written notification of the Department’s decision in respect of the stage two dispute, (“a stage two decision”), the date of that decision, or
 - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

- (4) Paragraph (3) shall cease to apply to any person if at any time that person—
 - (a) returns to HSC employment; or
 - (b) claims a pension under regulation 16 or 49 of the 1995 Regulations (Early retirement pension (with actuarial reduction) and preserved pension, respectively).
- (5) For the purpose of this regulation—

“stage one dispute” means a request made to the Department for a review of the first decision under Article 50 of the 1995 Order (Resolution of disputes), that is received

by the Department within a period of one year starting with the date on which that person's contract of employment is terminated;

"stage two dispute" means a request made to the Department to review the stage one decision under Article 50 of the 1995 Order that is received by the Department within a period of six months starting with the day on which that person is sent a written notification of a stage one decision;

"the final determination by the Pensions Ombudsman" means a written determination under section 147 of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage two decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage two decision.

Nominations and notices accepted by the Department under the 1995 Regulations to apply under Chapter 5 of this Part of these Regulations

136T

- (1) This regulation applies if—
 - (a) the Department has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 Section member; and
 - (b) on the day that the Department receives that person's option to join this Section of the Scheme, that person has not revoked that nomination or notice.
- (2) The nominations and notices referred to in paragraph (1) are—
 - (a) a nomination made in accordance with regulation 22 of the 1995 Regulations (Payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations 18 to 21 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
 - (b) a notice provided for the purposes of paragraph (3)(a) of regulation 22 of the 1995 Regulations that the person's surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations 18 to 21 of the 1995 Regulations;
 - (c) a notice provided for the purpose of regulation 31E of the 1995 Regulations (Surviving nominated partner's pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1) shall be treated—
 - (a) in the case of the nomination referred to in sub-paragraph (2)(a), as if that nomination has been accepted by the Department as a notice for the purposes of regulation 87;
 - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Department as a notice for the purposes of regulation 87 specifying that the Optant's personal representatives are to receive any lump or pension on the death of the Optant; and
 - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Department as a declaration for the purposes of regulation 68.

Late payment of pension with actuarial increase for a 2008 Optant

136U

(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 45 after reaching the age of 65.

(2) In the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—

(a) the pensionable service that Optant is entitled to count under—

(i) regulation 136C,

(ii) regulation 136E (if any), and

(iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65; and

(b) any contributions paid under regulation 34, 36 or 37 before reaching that age, shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

(3) In paragraph (2) the reference to the amount of the pension is to the amount of pension—

(a) before that pension had been reduced in accordance with regulation 136L; and

(b) before any commutation under regulation 58.

(4) The amount of the increase referred to in paragraph (2) must be calculated in accordance with guidance and tables provided by the Scheme actuary to the Department for the purposes of this regulation.

(5) In preparing that guidance and those tables the Scheme actuary must use such factors as the Scheme actuary considers appropriate, having regard, in particular, to—

(a) the period after reaching the age of 65 before the Optant becomes entitled to immediate payment of the pension; and

(b) the life expectancy of the Optant.

(6) The increase shall apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 47.

2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation 13A of the 1995 Regulations

136V

(1) This regulation applies to a 2008 Section Optant who—

(a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (ill health pension on early retirement) in respect of service in the 1995 Section ("the earlier 1995 Section service"); and

(b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 52 in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) For the purposes of determining whether an Optant can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 52, to—

- (a) a tier 1 ill-health pension; or
- (b) a tier 2 ill-health pension,

in respect of the later 2008 Section service, the Optant is entitled to the benefits set out in paragraph (4).

(4) The benefits mentioned in paragraph (3) are—

- (a) the member's tier 1 ill-health pension under regulation 13A of the 1995 Regulations in respect of the member's earlier 1995 Section service; and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member's later 2008 Section service.

This is subject to paragraph (5) and regulations 136N to 136R.

(5) If the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service;
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation 13B of the 1995 Regulations (Re-assessment of ill-health condition determined under regulation 13A); and
- (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of later 2008 Section service on the termination of that later service,

the Optant is entitled to the benefits set out in paragraph (6).

(6) Those benefits are—

- (a) a tier 2 ill-health pension paid in accordance with regulation 13B of the 1995 Regulations in respect of the earlier 1995 Section service; and
- (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation 13A of the 1995 Regulations

136W

(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—

- (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section; and
- (b) is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of an Optant referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant; and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 83.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2)

(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 52(5), if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 45, if the deceased Optant had reached the age of 65, to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 52(5), if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 45, if the deceased Optant had reached the age of 65, to which the Optant would have been entitled on the last day of the Optant's pensionable service.

(5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 49, the lump sum referred to in paragraph (2)(a) shall be determined by the Department after taking advice from the Scheme actuary.

Children's pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation 13A of the 1995 Regulations.

136X

(1) This regulation applies to a 2008 Section Optant ("a deceased Optant") who, in respect of service in this Section of the Scheme, was—

- (a) at the date of the Optant's death—
 - (i) an active member,
 - (ii) a non-contributing member,
 - (iii) a pensioner member, or
 - (iv) a deferred member; and
- (b) on that date was entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), "relevant service" for the purposes of paragraph (3) of regulation 76 shall have the meaning given in paragraph (3) of this regulation.

(3) "Relevant service" means—

- (a) in the case of a deceased Optant who was, at the date of the Optant's death, an active member the greater of—
 - (i) the pensionable service the deceased Optant was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 52(5) if the deceased Optant had become entitled to a tier 2 ill-health pension at that date, and
 - (ii) the deceased Optant's later 2008 Section service as an active member plus the difference between—
 - (aa) the aggregate of the Optant's earlier 1995 Section service and the later 2008 Section service as an active member; and
 - (bb) 10 years pensionable service,

- where the amount of service in paragraph (aa) is less than that specified in paragraph (bb);
- (b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the Scheme on the date of Optant’s death.
- (4) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of paragraph (3) of regulation 77 shall have the meaning given in paragraph (5).
- (5) The “basic death pension” means the greater of—
- (a) 75% of the deceased Optant’s annual pension (disregarding any additional pension); and
- (b) 75% of the annual pension to which the deceased would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service plus the difference between—
- (i) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service, and
- (ii) 10 years pensionable service,
- where the amount of service in (i) is less than that specified in (ii).
- (6) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of paragraph (3) of regulation 78 shall have the meaning given in paragraph (7).
- (7) The “basic death pension” means—
- (a) if the deceased Optant died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 76 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension); and
- (b) if the deceased died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
- (i) 75% of the pension to which the deceased Optant would have been entitled if the deceased Optant had become entitled to a pension under regulation 45 on the date of death (disregarding any additional pension), and
- (ii) 75% of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service that has been deferred plus the difference between—
- (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service that has been deferred; and
- (bb) 10 years pensionable service,
- where the amount of service in paragraph (aa) is less than that specified in paragraph (bb).”.

Amendment of regulation 137

56.—(1) Regulation 137 (Interpretation of Part 3: general) is amended as provided by paragraphs (2) to (5).

(2) At the appropriate place in the alphabetical order, insert—

““2008 Section Optant” has the meaning given in regulation 260A;

“the 1995 section” means the section of the Health and Social Care Pension Scheme as set out in the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;

“capped increase to pensionable earnings” must be read in accordance with regulation 231;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000⁽¹³⁾;

“pension debit member” means a member of this Section of the Scheme whose benefits, or future benefits, under this Scheme have been reduced under Article 28 of the 1999 Order (Reduction under pension sharing order following divorce or nullity of marriage), whether before or after the member became a member of this Section of the Scheme;”.

(3) In the definition of “employing authority”—

(a) after paragraph (j) add—

“(k) “Health and Social Care Trust (HSC Trust)” established under section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽¹⁴⁾;

(l) “Regional Health and Social Care Board (RHSCB)” established under section 7(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(m) “Regional Business Services Organisation (RBSO)” established under section 14(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(n) “Patient and Client Council (PCC)” established under section 16(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;

(o) “Regional Agency for Public Health and Social Wellbeing (RAPHSW)” established under section 12(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009”;

(b) Omit the definitions at paragraphs (a), (b) and (c).

(4) Omit the definition of “capped transferred-in service” and “HPSS Superannuation Scheme 1995”.

(5) For the definition of—

(a) “the Scheme”, substitute ““the Scheme” means the Health and Social Care Pension Scheme as set out in these regulations and the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;”;

(b) “host Board” substitute—

““host Board”—

(a) in respect of a person who is a registered medical practitioner or non-GP provider who is—

(i) a partner in a partnership that is a GMS practice,

(ii) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services,

(iii) 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,

(iv) an individual who is a GMS practice or an APMS contractor,

⁽¹³⁾ 2000 c. 7

⁽¹⁴⁾ 2009 c. 1 (N.I.)

means the Regional Health and Social Care Board (RHSCB), and such a person shall be deemed to be employed by the RHSCB for the purposes of this Part, except for where regulation 164(5) or (6) applies;

- (b) in respect of a dentist performer, means the RHSCB;”.

Amendment of regulation 139

57. In paragraph (1) of regulation 139 (Meaning of “pensionable service”) after sub-paragraph (c), add—

“; and

- (d) any period of pensionable service the member is entitled to count under Chapter 10 of this Part.”.

Amendment of regulation 141

58. After paragraph (1)(e) of regulation 141 (Meaning of “qualifying service”) add—

“; and

- (f) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 10 of this Part.”.

Amendment of regulation 143

59. After paragraph (9) of regulation 143 (Meaning of “pensionable earnings”), add—

“(10) The pensionable earnings of a principal practitioner include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 10 of this Part.”.

Omission of regulation 147

60. Omit regulation 147 (Restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service).

Amendment of regulation 149

61. After paragraph (4) of regulation 149 (Meaning of pensionable earnings in relation to other practitioners), add—

“(5) The pensionable earnings of an assistant practitioner or a locum practitioner, include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 10 of this Part.”.

Amendment of regulation 153

62.—(1) Paragraph (3) of Regulation 153 (Eligibility: general) is amended as provided by paragraphs (2) and (3).

(2) In sub-paragraph (a), omit “and meets any one of the other Scheme conditions in paragraph (5)”.

(3) After sub-paragraph (b), insert (as full out words) “and meets any one of the other Scheme conditions (see paragraph (5)).”.

New regulation 153A

63. After regulation 153 (Eligibility: general), insert—

“Eligibility: transitional**153A**

- (1) A person is eligible to be an active member of this Section of the Scheme if—
- (a) the Department has accepted that person’s option to join this Section of the Scheme under Chapter 10 of this Part; and
 - (b) that person is not prevented by regulation 154 or 158 from doing so.
- (2) If a person referred to in paragraph (1)—
- (a) is entitled to a tier 1 ill-health pension under regulations 13A(3)(a) of the 1995 Regulations (Ill-health pension on early retirement); and
 - (b) as the result of a determination made by the Department under regulation 13B(3) of those Regulations, that person becomes entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension,

that person shall cease to be eligible to be an active member of this Section of the Scheme from the date the Department makes that determination.”.

Amendment of regulation 165

64. After paragraph (8) of regulation 165 (Member’s option to pay additional periodical contributions to purchase additional pension), add—

“(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.”.

Amendment of regulation 167

65. After paragraph (6) of regulation 167 (Member’s option to pay lump sum contribution to purchase additional pension), add—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.”.

Amendment of regulation 168

66. After paragraph (5) of regulation 168 (Payment of additional lump sum contributions by employing authority), add—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.”.

Amendment of regulation 171

67.—(1) Regulation 171 (Effect of payment of additional contributions under this Chapter) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (3), after—

- (a) “Chapter 4” insert “or Chapter 10 of this Part”;
- (b) “180” insert “and 260Q”.

(3) After paragraph (10), add—

“(11) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.”.

Amendment of regulation 173

68. After paragraph (5) of regulation 173 (Effect of part payment of periodical contributions), add—

“(6) In the case of 2008 Section Optant, this regulation is subject to regulation 260D.”.

Amendment of regulation 176

69. After paragraph (6) of regulation 176 (Normal retirement pensions), add—
“(7) In the case of 2008 Section Optant, this regulation is subject to regulation 260K.”.

Amendment of regulation 178

70. After paragraph (4) of regulation 178 (Late payment of pension with actuarial increase), add—
“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 260Q.”.

Amendment of regulation 179

71. After paragraph (4) of regulation 179 (Early payment of pension with actuarial reduction), add—
“(5) In the case of 2008 Section Optant, this regulation is subject to regulation 260K.”.

Amendment of regulation 180

72. After paragraph (8) of regulation 180 (Partial retirement: members aged at least 55), add—
“(9) In the case of 2008 Section Optant, this regulation is subject to regulation 260K.”.

Amendment of regulation 182

- 73.—(1) Regulation 182 (Early retirement on ill-health (active members and non-contributing members)) is amended as provided by paragraphs (2) to (4).

- (2) For paragraph (5)(b), substitute—

- “(b) is not increased by the enhancement period in the circumstances referred to in (a) if—
(i) the member’s pensionable service before and after the break is treated separately under regulation 237, or
(ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 260G.”.

- (3) In paragraph (17) for the definition of “permanently”, substitute—

““permanently” means—

- (a) the period until age 65; and
(b) in the case of a 2008 Section Optant who, before joining this Section of the Scheme, was assessed by a medical adviser as being—
(i) permanently incapable of efficiently discharging their duties for the purposes of regulation 13A(2)(b)(i) of the 1995 Regulations (Ill-health pension on early retirement), that Optant shall be deemed to be permanently incapable of discharging the duties of the Optant’s employment efficiently for the purposes of paragraph (2) (a),
(ii) permanently incapable of regular employment of like duration for the purposes of regulation 13A(2)(b)(ii) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a);”.

- (4) After paragraph (17), add—

“(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 260K, 260M to 260P and 260R.”.

Amendment of regulation 183

74.—(1) Regulation 183 (Re-assessment of entitlement to an ill-health pension determined under regulation 182) is amended as provided by paragraphs (2) and (3).

(2) For paragraph (2), substitute—

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

- (a) the member makes the application in writing—
 - (i) within three years of the date of issue of the notice, or
 - (ii) in the case of a member who engages in further HSC employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
 - (i) relating to whether the condition in regulation 182(3)(a) is satisfied at the date of the Department’s review, and
 - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 182(2)(a);
- (c) no previous application for a review has been made under this paragraph; and
- (d) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 240.”.

(3) After paragraph (3), add—

“(4) In the case of a 2008 Section Optant, this regulation is subject to regulations 260O and 260P.”.

Amendment of regulation 184

75. After paragraph (9) of Regulation 184 (Early retirement on ill-health (deferred members)), add—

“(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 260K.”.

Amendment of regulation 185

76. After paragraph (9) of regulation 185 (General option to exchange part of pension for lump sum), add—

“(10) In the case of a 2008 Section Optant, this regulation is subject to paragraph (4) of regulation 260H and regulation 260K.”.

Amendment of regulation 187

77. For regulation 187 (Reduction in pension debit member’s benefits), substitute—

“**Reduction in pension debit member’s benefits**

187

(1) 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 (Reduction under pension sharing order following divorce or nullity of marriage).

(2) In the case of a 2008 Section Optant, this regulation is subject to paragraph (2) of regulation 260H.”.

Amendment of regulation 195

78. After paragraph (2) of regulation 195 (Meaning of “surviving nominated partner”), add—
“(3) In the case of a 2008 Section Optant, this regulation is subject to regulation 260L.”.

Amendment of regulation 196

79.—(1) Regulation 196 (Amount of pensions under regulation 194: active and non-contributing members) is amended as provided by paragraphs (2) to (4).

(2) At the end of paragraph (2), insert (as full out words) “Sub-paragraph (b) is subject to paragraph (7).”.

(3) At the end of paragraph (3), insert (as full out words) “This is subject to paragraph (7).”.

(4) After paragraph (6), insert—

“(7) For the purposes of paragraphs (2)(b) and (3) any increase under—

(a) regulation 178; or

(b) regulation 260Q,

is ignored.”.

Amendment of regulation 197

80.—(1) Regulation 197 (Amount of pensions under regulation 194: pensioner members), is amended as provided by paragraphs (2) and (3).

(2) For paragraph (3), substitute—

“(3) For the purposes of paragraph (1) any reduction in the member’s pension under—

(a) Chapter 8 of this Part;

(b) regulation 185; or

(c) regulation 260K,

is ignored.

(3A) For the purpose of paragraph (2)—

(a) any reduction in the rate of member’s pension under—

(i) regulation 179,

(ii) regulation 185, or

(iii) regulation 260K; and

(b) any increase in the rate of the member’s pension under—

(i) regulation 178, or

(ii) regulation 260Q,

is ignored.”.

(3) Omit paragraph (8).

Amendment of regulation 200

81. For paragraph (3)(b) of regulation 200 (Re-employed pensioners: adult survivor pensions in initial period), substitute—

- “(b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under—
- (i) Chapter 8 of this Part,
 - (ii) regulation 185, and
 - (iii) regulation 260K.”.

Amendment of regulation 203

82. In regulation 203 (Amount of children’s pension under regulation 201: deceased active members and deceased non-contributing members) at the end of paragraph (3) insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 260W.”.

Amendment of regulation 204

83.—(1) Regulation 204 (Amount of children’s pension under regulation 201: deceased pensioner members) is amended as provided by paragraphs (2) and (3).

(2) At the end of paragraph (3), insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 260W.”.

(3) For paragraph (8), substitute—

- “(8) For the purposes of paragraphs (3), (5) and (6), any reduction in the member’s pension under regulation 185 and regulation 260K will be ignored.”.

Amendment of regulation 205

84. In regulation 205 (Amount of children’s pension under regulation 201: deceased deferred members), at the end of paragraph (3) insert (as full out words), “In the case of a 2008 Section Optant, this is subject to regulation 260W.”.

Amendment of regulation 210

85.—(1) Regulation 210 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 180 employments)) is amended as provided by paragraphs (2) to (4).

(2) At the end of paragraph (1), insert (as full out words), “In the case of a 2008 Section Optant, this is subject to regulation 206V.”.

(3) For paragraph (2)(b), substitute—

- “(b) an amount equal to twice the annual average of the member’s uprated earnings by reference to which the pension was calculated, less the aggregate of—
- (i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 185, and
 - (ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 260K.”.

(4) For paragraph (6), substitute—

- “(6) The reference in paragraph (2)(a) to the annual rate of the member’s pension is to the member’s pension after it has been reduced to take account of—

- (a) the exercise by the member of an option under regulation 185; and

- (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 260K.”.

Amendment of regulation 211

86.—(1) Regulation 211 (Amount of lump sum; dual capacity members (disregarding regulation 180 employments)) is amended as provided by paragraphs (2) and (3).

(2) At the end of paragraph (2), insert (as full out words) “This is subject to paragraph (4).”.

(3) After paragraph (3), add—

“(4) In the case of a 2008 Section Optant—

- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 260K; and
- (b) the amount of the Optant’s uprated earnings for the purposes of paragraph (2)(b)(ii) shall be reduced by the aggregate of—
 - (i) the amount of the lump sum paid to the Optant under regulation 260K, and
 - (ii) the lump sum under regulation 185 referred to in paragraph (2)(b)(ii).”.

Amendment of regulation 212

87.—(1) Regulation 212 (Amount of lump sum: dual capacity members with pensions under regulation 180) is amended as provided by paragraphs (2) and (3).

(2) After paragraph (2)(a), add—

“(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));

(c) in the case of a 2008 Section Optant, this is subject to paragraph (4) and regulation 260V.”.

(3) For paragraph (4), substitute—

“(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—

- (a) in exchange for pensions under regulation 180 as a result of the member exercising the option under regulation 185; and
- (b) in the case of a 2008 Section Optant the lump sum paid to that Optant under regulation 260K.”.

Amendment of regulation 214

88. After paragraph (12) of regulation 214 (Payment of lump sums or pensions on death), add—

“(13) In the case of a 2008 Section Optant, this regulation is subject to regulation 260L.”.

Amendment of regulation 225

89.—(1) Regulation 225 (Calculating amounts of transfer value payments) is amended as provided by paragraphs (2) to (4).

(2) For paragraph (4), substitute—

“(4) In paragraph (3), “minimum transfer value” means—

(a) in the case of a person other than a 2008 Section Optant, the sum of—

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

(b) in the case of a 2008 Section Optant, the sum of—

- (i) any transfer value payments that have been made to the 1995 Section in respect of the Optant,
- (ii) any contributions paid by the Optant under regulation 10 as modified by paragraph 10 of Schedule 2 to the 1995 Regulations (Contributions by members) in respect of superannuable employment in that Section on or before 31st March 2008, and
- (iii) any payments made by the Optant under regulation 67 as modified by paragraph 20 of Schedule 2 to the 1995 Regulations (Right to buy additional service) for the purchase of additional service,

which entitle the Optant to count, under Chapter 10 of this Part, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.”.

(3) At the end of paragraph (5)(b), add—

“; and

(c) separately in respect of—

- (i) the aggregate of any amounts of pensionable earnings that the member is entitled to count for the purpose of calculating benefits payable to, or in respect of, the member that fall to be treated as—
 - (aa) a capped increase to pensionable earnings in accordance with regulation 231; or
 - (bb) an amount of capped Optant pensionable earnings in accordance with regulation 260I, and
- (ii) any amount of pensionable earnings that do not fall to be so treated.”.

(4) After paragraph (5), add—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 260K.”.

Amendment of regulation 227

90. After paragraph (4) of regulation 227 (Right to apply for acceptance of transfer value payment from another scheme), add—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.”.

Amendment of regulation 228

91.—(1) Regulation 228 (Procedure for applications under regulation 227) is amended as provided by paragraphs (2) to (4).

(2) In paragraph (1)(d), in—

(a) paragraph (i), after “of the” insert “increase to pensionable earnings and the”;

(b) paragraph (ii), after “of the” insert “increase to pensionable earnings and the”.

(3) In paragraph (2)(a), for “149 (Restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service)” substitute “231”.

(4) For paragraph (3), substitute—

“(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of—

(a) the increase to pensionable earnings that will count under this section of the Scheme for the purposes of calculating benefits payable to or in respect of the member; and

(b) the amount of pensionable service that will count for the purposes of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139.”.

Amendment of regulation 229

92. For regulation 229 (Acceptance of transfer value payments), substitute—

“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.

This is subject to paragraph (10).

(2) If the Department accepts the payment, the member is entitled to count—

(a) the appropriate increase in the member’s pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the member under the Scheme; and

(b) the relevant period of pensionable service for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139.

This is subject to paragraph (8).

(3) In paragraph (2)(a) “the appropriate increase” means the increase calculated in accordance with regulation 230.

(4) In paragraph (2)(b) “the relevant period” means the period calculated by reference to whichever of paragraphs (5), (6) or (7) apply in respect of the transfer payment.

(5) If the Department accepts the payment in respect of a member of a corresponding 1995 scheme, “the relevant period” means the period calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the corresponding 1995 scheme.

(6) If the Department accepts the payment under the public sector transfer arrangements, “the relevant period” means the period of pensionable service the member is entitled to count 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.

(7) If the Department accepts the payment from a scheme that does not participate in the public sector transfer arrangements, “the relevant period” means a period equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made.

(8) Any part of a member’s increase to pensionable earnings under paragraph (2)(a) that falls to be treated as a capped increase to pensionable earnings shall count as a capped increase to pensionable earnings for the purpose of paragraph (5) of regulation 225.

(9) For the meaning of “capped increase to pensionable earnings”, see regulation 231.

(10) 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.

This is subject to paragraph (11).

(11) Paragraph (10) does not apply if the transfer would be paid under the public sector transfer arrangements.

(12) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.”.

Amendment of regulation 230

93.—(1) Regulation 230 (Calculation of transferred-in pensionable service) is amended as provided by paragraphs (2) to (5).

(2) In the heading for “Calculation of transferred-in pensionable service”, substitute “Calculation of increase to pensionable earnings as the result of a transfer-in”.

(3) For paragraph (2), substitute—

“(2) Subject to paragraph (4), 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—

- (a) the financial year in which the member joined this Section of the Scheme; or
- (b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the day on which the member joined this Section of Scheme (“the starting day”).”

(4) In paragraph (3)(b), after “payments)” insert “equal to the amount of the transfer payment”.

(5) After paragraph (6), add—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.”.

Amendment of regulation 231

94.—(1) Regulation 231 (Meaning of “capped transferred-in service”) is amended as provided by paragraphs (2) to (4).

(2) In the heading, for “Meaning of “capped transferred-in service”” substitute “Meaning of “Capped increase to pensionable earnings””.

(3) For paragraph (2), substitute—

“(2) For the purposes of this Part—

- (a) any part of the increase to pensionable earnings that the member is entitled to count under regulation 229(2)(a); and
- (b) which is the result of capped service in employment to which the transferring scheme applied,

is a capped increase to pensionable earnings.”.

(4) After paragraph (4), add—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.”.

Amendment of regulation 256

95. In paragraph (5)(a) of regulation 256 (Interest on late payment of benefits and refunds of contributions), after “Chapter 4”, insert “or a lump sum under regulation 260K”.

Insertion of Chapter 10

96. After Chapter 9 of Part 3 (Miscellaneous and supplementary provisions), add—

“CHAPTER 10

Section 2008 Optants

Application of Chapter 10 of this Part

260A

(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the Scheme on the basis set out in this Chapter, including persons who—

- (a) return to HSC practitioner service in respect of which there is a liability to pay contributions to the Scheme in accordance with regulation 10 of the 1995 Regulations (as modified by paragraph 10 of Schedule 2 to those Regulations) (Contributions by members) within a period of less than 5 years beginning with the day on which they last left such service (whether or not that period includes 1st October 2009); and
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation 7(3) of the 1995 Regulations (Restrictions on membership).

This Chapter does not apply to person if—

- (i) that person is an active member of the 1995 Section by virtue of regulation 13(11) of the 1995 Regulations (Early retirement pension (ill-health)), or

- (ii) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(2) In these regulations a member of this Section of the Scheme to whom this Chapter applies is referred to as a “2008 Section Optant”.

Options for 1995 Section members to join this Section of the Scheme under Chapter 10 of this Part

260B

- (1) A person who by virtue of that person’s practitioner service—
 - (a) was an active member of the 1995 Section—
 - (i) on, or after, 1st October 2009, and
 - (ii) on the day that person’s option to join this Section of the Scheme was received by the Department; and
 - (b) would be eligible to join this Section of the Scheme if that person met the condition in regulation 153(3)(a) (which requires that the person’s practitioner service began on or after 1st April 2008),

may join this Section of the Scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the Scheme if that person opts to do so.

- (3) The option may only be exercised by giving notice in writing to the Department—
 - (a) in such form as the Department requires; and
 - (b) before the date the Department specifies for that purpose in the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme issued to that person (“the comparative statement”).

This is subject to paragraphs (4) and (9) and regulation 260T.

- (4) For the purpose of paragraph (3)—
 - (a) the date specified by the Department in the comparative statement shall be a date that is at least four months later than the comparative statement issue date; and
 - (b) the notice shall be—
 - (i) irrevocable, and
 - (ii) treated as having been given on the date on which it is received by the Department.

(5) The option shall be effective from the first day of the member’s superannuable service in the 1995 Section falling on or after 1st April 2008, and—

- (a) the person shall be treated as if that person had been a member of this Section of the Scheme from that date;
- (b) the member’s service and superannuable earnings both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section shall count under this Section of the Scheme only to the extent that it would have counted had the member been an active member of this Section of the Scheme from that date.

This is subject to paragraph (12).

(6) If contributions due from the member under Chapter 3 of this Part in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member's pensionable earnings in such manner and at such rate as the Department requires.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the Scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Department may extend the time limit in paragraph (3) if the Department considers that the person has not had a reasonable opportunity to consider whether to exercise the option.

(9) The Department may accept an option to join the 2008 Section that is received after the person ceases to be an active member of the 1995 Section if—

- (a) a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme was issued to the person whilst that person was an active member of the 1995 Section;
- (b) but for the exercise of the option the person would otherwise become entitled to the immediate payment of benefits under Part III of the 1995 Section (as modified by paragraphs 11 and 12 of Schedule 2 to the 1995 Regulations);
- (c) the person has provided the Department with a notice in writing in such form as the Department may require that benefits are not to be paid from the 1995 Section and has not revoked that notice; and
- (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.

(10) A person may revoke a notice given for the purposes of sub-paragraph (9)(c)—

- (a) at any time;
- (b) in writing on the form provided by the Department for that purpose.

(11) A person who has revoked a notice in accordance with paragraph (10) may not provide a further notice under paragraph (9).

(12) A person exercising an option under this regulation who is entitled to a pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) may count as qualifying service for the purpose of this Section of the Scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count under regulation 5 of the 1995 Regulations (Meaning of qualifying service) in determining their entitlement to that pension.

(13) For the purposes of paragraphs (4) and (9) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent (whether by electronic communication or otherwise)—

- (a) to the person; or
- (b) to the person's employing authority.

(14) Where paragraph 13(b) applies the person must have a period equal to at least three months ending on the date specified by the Department in accordance with paragraph (4)

(a) in which to opt to join this Section of the Scheme.

This is subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8).

Transfer of service and pensionable earnings from the 1995 Section

Service and pensionable earnings credited from the 1995 Section

260C

(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the Scheme, and
- (b) is not entitled to a pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement),

is entitled to count the following service under this Section of the Scheme.

(2) The member may count as qualifying service a period equal in length to the period of qualifying service up to, and including, 31st March 2008 which the member was entitled to count under the 1995 Section (but not exceeding 45 years).

(3) The pensionable earnings and service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count is an amount equal to the amount of superannuable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation 4 of the 1995 Regulations (Meaning of superannuable service).

This is subject to paragraphs (9) and regulation 260K.

(4) The pensionable earnings and service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count is an amount equal to the amount of superannuable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation 4 of the 1995 Regulations multiplied by the factor specified in paragraph (8) applicable to the case.

This is subject to paragraphs (5), (8), (9) and (10) and regulation 260K.

(5) In determining the amounts of superannuable earnings up to, and including, 31st March 2008 in paragraph (3) or (4), the Department shall have regard to—

- (a) the superannuable earnings for any scheme year recorded by the Optant's host Board;
- (b) the superannuable earnings for any scheme year certified by the Optant in accordance with paragraph 23 of Schedule 2 to the 1995 Regulations.

This is subject to paragraph (6).

(6) If, in respect of any particular scheme year, the superannuable earnings referred to in paragraph (5)(a) or (b) are not available, the Department shall determine the superannuable earnings for that scheme year and in doing so shall have regard to—

- (a) the contributions paid in accordance with regulation 10 of the 1995 Regulations (as modified by paragraph 10 of Schedule 2 to those Regulations) (Contributions by members) or regulation 160; or
- (b) the figure supplied by the host Board.

This is subject to paragraph (7).

(7) If—

- (a) the Department has made a determination of superannuable earnings in accordance with paragraph (6); and
- (b) the superannuable earnings referred to in paragraph (5) that were not available to the Department at the time of that determination, subsequently become available,

the Department shall revise that determination accordingly.

(8) The factor referred to in paragraph (4) is the factor specified by the Department for that purpose.

(9) For the purposes of paragraphs (3) and (4) the superannuable earnings for practitioner service which the 2008 Section Optant was entitled to count under regulation 4 of the 1995 Regulations shall not include any superannuable service the Optant was entitled to count under regulation 4(1)(e) of that Section.

(10) When a 2008 Section Optant becomes a member of this Section of the Scheme under this Part all rights in respect of that Optant under the 1995 Section are extinguished.

Treatment of Additional Pension

260D

(1) This regulation applies to a 2008 Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension (“OPAP”) under regulation 73A or 73C or whose employing authority had done so under regulation 73D of the 1995 Regulations (which deal with the purchase of additional pension by periodical contributions and lump sums).

(2) Where paragraph (1) applies, the amount of additional pension that will count under this Section of the Scheme shall be calculated in accordance with—

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation 73G of the 1995 Regulations (Effect of payment of additional contributions under this Part);
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation 73F of those Regulations (Cancellation and cessation of options under regulation 73A).

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 171 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation 73G of the 1995 Regulations where the person’s chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation 73G of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Department shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

Paragraph (3)(b) is subject to paragraph (9).

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 173 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation 73F of the 1995 Regulations, where the person’s chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation 73F of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Department shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

Paragraph (4)(b) is subject to paragraph (9).

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section shall do so from the effective date specified in paragraph (5) of regulation 260B.

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1); and

- (b) where at the effective date specified in paragraph (5) of regulation 260B—
 - (i) that person—
 - (aa) was making additional contributions in accordance with an OPAP exercised under regulation 73A of the 1995 Regulations; or
 - (bb) had applied to make, but had not yet begun making, additional contributions under regulation 73A of the 1995 Regulations; or
 - (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation 73C of the 1995 Regulations, or
 - (ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation 73D of the 1995 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation 73A of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section of the Scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 165, 167 or 168 would apply in that case.

(8) Where paragraph (6) applies and the person's chosen birthday referred to in regulation 73A of the 1995 Regulations was 60, the OPAP referred to in that paragraph will apply in this Section of the Scheme—

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 165, 167 or 168 would apply in that case; and
- (b) after adjustment, having regard to the advice of the Scheme actuary, so that—
 - (i) the amount of the additional pension purchased in this Section of the Scheme is the same as that which would have been purchased in the 1995 Section, but
 - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the Scheme, reduce or (where appropriate) cease to be payable.

This is subject to paragraph (9).

- (9) If paragraph (3)(b), (4)(b) or (8) of this regulation applies and—
 - (a) the amount of the additional pension calculated in accordance with paragraph (3) (b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 165, 167 or 168; or
 - (b) the limit on the total increase in the member's pension referred to in regulation 165 will be exceeded by the amount of additional pension that counts in this Section of the Scheme in accordance with paragraph (8)(b)(i) notwithstanding any reduction in, or cessation of, additional contributions payable in accordance with paragraph (8)(b)(ii),

the total increase in the member's pension under this regulation, taken together with any other increase under regulations 165, 167 or 168—

- (i) will be subject to the limit on the total increase in the member's pension described in regulation 165, 167 or 168, and
- (ii) the amount of additional pension that counts in this Section of the Scheme in accordance with paragraphs (2) to (8) that exceeds that limit will be converted to pensionable earnings for the purposes of regulation 143(10), and in determining the amount of such additional pension to be converted

into pensionable earnings, the Department shall have regard to the advice of the Scheme actuary.

Treatment of Additional Service and pensionable earnings

260E

(1) A 2008 Section Optant—

- (a) who becomes a member of this Section of the Scheme; and
- (b) is buying or has already bought a period of additional service that counts as superannuable service under regulation 4(1)(e) of the 1995 Section (Meaning of superannuable service),

will be able to count an additional amount of pensionable earnings for that superannuable service in this Section of the Scheme as described in whichever of paragraphs (5) or (6) apply to that Optant.

(2) The additional pensionable earnings referred to in paragraph (1) are—

- (a) any additional superannuable earnings bought under regulation 67 of the 1995 Regulations, as modified by paragraph 20(2) of Schedule 2 to those Regulations (Right to buy additional service) before the date that person's option to join this Section of the Scheme was received by the Department in accordance with regulation 260B; and
- (b) any additional superannuable earnings bought under regulation 22 of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984(15) (Purchase of added years of contributing service).

This is subject to paragraphs (3) and (4).

(3) The additional superannuable earnings referred to at paragraph (2)(a) will be calculated in accordance with—

- (a) paragraph (4) of regulation 67 of the 1995 Regulations, as modified by paragraph 20(2) or, as the case may be, paragraph 20(4) of Schedule 2 to those Regulations, in the case of an election that had ceased and was paid for in full by the date referred to paragraph (2)(a);
- (b) paragraphs (1), (4) and (5) (but not (6)) of regulation 73 of those Regulations (Part payment for additional service or unreduced retirement lump sum), in the case of an election that had ceased but had only partially been paid for at that date; or
- (c) paragraphs (1), (4) and (5) (but not (6)) of regulation 73 of those Regulations, in the case of an election that remained in force immediately before that date.

Paragraph (3)(c) is subject to paragraph (7).

(4) The additional superannuable earnings referred to at paragraph (2)(b) will be calculated in accordance with whichever of paragraph (3) or (4)(b) of regulation 22 of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984 applies to the Optant.

(5) The additional pensionable earnings which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section of the Scheme is an amount equal to the amount of additional superannuable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or paragraph (4) applies.

(6) The additional pensionable earnings which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section of the Scheme are the pensionable earnings found by—

- (a) first taking the additional superannuable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies (“ASE”), and
- (b) then multiplying ASE by the factor specified by the Department for that purpose.

(7) Where a member was buying additional service by means of regular additional contributions immediately before the date referred to in paragraph (2)(a), the member's—

- (a) election to buy additional service will cease from that date; and
- (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member’s pensionable pay in accordance with regulation 260B(6) and (7).

(8) For the purposes of calculating the Optant’s benefits under this Section of the Scheme the additional pensionable earnings that the Optant is entitled to count under paragraph (5) or as the case may be paragraph (6) of this regulation will be added to the amount of pensionable earnings the member is entitled to count under—

- (a) regulation 260C(3), if the member is under age 60 on 1st October 2009; or
- (b) regulation 260C(4), if the member is age 60 or over on that date.

This is subject to regulation 260R.

Treatment of unreduced retirement lump sum

260F

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person’s option to join this Section of the Scheme was received by the Department in accordance with regulation 260B, had made an election under regulation 68 of the 1995 Regulations (Right to buy an unreduced lump sum) to—

- (a) purchase an unreduced retirement lump sum for service before 25th March 1972; or
- (b) buy additional survivor’s pension for service before 6th April 1988,

which satisfies any of the conditions in paragraph (2).

(2) Those conditions are that the election—

- (a) was paid for in full by the date referred to in paragraph (1);
- (b) ceased before the date referred to in paragraph (1), but before completion of the additional contributions payable;
- (c) was payable by additional contributions and remained in force immediately before the date referred to in paragraph (1); or
- (d) was payable by deduction from the member’s retirement lump sum.

(3) If paragraph (1) applies, the election referred to in that paragraph will cease to be effective from 1st April 2008 and—

- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 260B(6) and (7);
- (b) any liability to pay additional contributions will cease from, and including 1st April 2008; and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

Treatment of 2008 Section Optants to whom regulation 52(3) of the 1995 Regulations applied immediately before 1st April 2008

260G

- (1) This regulation applies to a 2008 Section Optant—
- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 4 and 5 of this Part; and
 - (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation 52(3) of the 1995 Regulations (Early leavers returning to superannuable employment).
- (2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—
- (a) as a deferred member of this Section of the Scheme in respect of any period of practitioner service and pensionable earnings credited to that Optant under regulation 260C that relates to one or more periods of practitioner service in the 1995 Section that occurred before a break of 12 months or more in such service (“an earlier service credit”); and
 - (b) as if the Optant became an active member for the first time on the first day of any period of practitioner service and pensionable earnings credited to that Optant under regulation 260C that relates to a period of superannuable service in the 1995 Section that occurred after a break of 12 months or more in such service.

This is subject to paragraph (3).

- (3) The Optant’s benefits in respect of an earlier service credit mentioned in paragraph (2) shall be calculated—
- (a) separately; and
 - (b) by reference to the member’s uprated earnings calculated in accordance with paragraph 11 of Schedule 2 to the 1995 Regulations (Normal retirement pension) in respect of that particular period.

This is subject to regulation 182(5)(b)(ii).

Pension debit members

260H

- (1) This regulation applies where, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member.
- (2) The amount of the reduction to be made to the Optant’s pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant’s pension under the 1995 Section calculated in accordance with Article 28 of the 1999 Order (Reduction under pension sharing order following divorce or nullity of marriage) adjusted by the factor referred to in paragraph (3).
- (3) The factor referred to in paragraph (2) is the factor specified by the Department for that purpose.
- (4) The Department may, after taking advice from the Scheme actuary, make such modifications to—
- (a) the Optant’s rights; and
 - (b) as to the form of the Optant’s benefits,

as the Department considers necessary for the purpose specified in paragraph (5).

(5) If in the opinion of the Department, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant's rights are subject for some or all of the benefits under this Section of the Scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Department may modify those benefits as described in paragraph (4).

Pensionable earnings credited under regulations 260C and 260E to be treated as capped Optant pensionable earnings

260I

(1) This regulation applies for the purpose of determining the amount of an Optant's pensionable earnings (if any) that fall to be treated as capped Optant pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the Optant under this Part.

(2) In paragraph (1) "capped Optant pensionable earnings" means the amount of pensionable earnings that the Optant is entitled to count under regulations 260C and 260E in respect of an amount of capped superannuable earnings for service in the 1995 Section up to, and including, 31st March 2008.

(3) For the purposes of paragraph (2), the Optant's pensionable earnings were capped superannuable earnings in respect of service in the 1995 Section so far as—

- (a) in the case of superannuable earnings in respect of service before 6th April 2006,—
 - (i) the Optant was an active member of the 1995 Section, and
 - (ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to superannuable earnings limited in each tax year to the permitted maximum for that year within the meaning of Section 590C(2) of the Income and Corporation Taxes Act 1988; or
- (b) in the case of superannuable earnings in respect of service on or after 6th April 2006,—
 - (i) the Optant was an active member of the 1995 Section, and
 - (ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to superannuable earnings limited in each tax year to an amount calculated in the same manner as the permitted maximum under Section 590C(2) of the Income and Corporation Taxes Act 1988 was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit referred to in that paragraph, the Optant's earnings in any tax year would have exceeded the amount of the limit.

Miscellaneous provisions

Transfers in: transitional provision

260J

(1) This regulation applies to a 2008 Section Optant who—

- (a) commenced a period of superannuable service as a practitioner member in the 1995 Section on, or after, 1st April 2008; and

- (b) within one year of the commencement of that service makes an application to transfer accrued rights to benefits to the 1995 Section under regulation 60 of the 1995 Regulations (Member's right to transfer accrued rights to benefits to this Section of the Scheme).

(2) If—

- (a) the Department accepts the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation 60(4) of the 1995 Regulations; and
- (b) that payment is received by the Department before the day on which the person's option to join this Section of the Scheme is received,

the increase to pensionable earnings that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).

(3) If the transfer payment in respect of an application referred to in paragraph (1) is received by the Department on, or after, the day on which the person's option to join this Section of the Scheme is received—

- (a) the Department may accept that payment under this Section of the Scheme—
 - (i) without requiring the Optant to make an application under regulation 227, and
 - (ii) subject to such other conditions as the Department may require; and
- (b) if the Department accepts the payment, the increase to pensionable earnings that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of that Optant under this Section of the Scheme will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).

(4) The increase to pensionable earnings that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, the Optant under this Section of the Scheme—

- (a) will be calculated in accordance with regulation 230;
- (b) the financial year in which the member joined this Section of the Scheme for the purposes of regulation 230(2)(a) will be the financial year in which the Optant's superannuable service referred to in paragraph (1) commenced;
- (c) the starting day for the purpose of regulations 230(2)(b) and 230(4) will be the day that the member's superannuable service referred to in paragraph (1) commenced.

This is subject to paragraph (6).

(5) The period of pensionable service that the Optant is entitled to count for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139 will be the relevant period calculated in accordance with regulation 229.

(6) If the transfer value payment is accepted by the Department under the public sector transfer arrangements—

- (a) regulation 231 shall apply to the Optant in respect of the increase to pensionable earnings that the Optant is entitled to count under this regulation; and

- (b) the reference in regulation 231(2) to the increase to pensionable earnings that the member is entitled to count under regulation 229(2)(a) shall be read as a reference to the increase to pensionable earnings the Optant is entitled to count under paragraph (4).

Amount of pension and lump sum to be paid to a 2008 Section Optant

260K

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) is entitled to an annual pension under Chapter 4 of this Part, or
 - (b) is entitled to the payment of a transfer value under Chapter 6 of this Part in respect of the pension that has accrued to or, in respect of, that Optant under this Section of the Scheme.
- (2) In the case of a 2008 Section Optant referred to in paragraph (1)(a)—
 - (a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation that apply to that Optant; and
 - (b) the annual amount of pension referred to in paragraph (1)(a) to which that Optant is entitled, shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.
- (3) In the case of a 2008 Section Optant referred to in paragraph (1)(b)—
 - (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5); and
 - (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.
- (4) Except in a case to which paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).
This is subject to paragraphs (13) and (15).
- (5) The amount of lump sum shall be determined by—
 - (a) applying the formula—

3 x 1.4% of the member's Relevant Up-rated Earnings

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (6) In the case of an Optant—
 - (a) who becomes entitled to an annual amount of pension payable under regulation 179; and
 - (b) on the day the Optant becomes entitled to that pension the Optant has not attained age 60,

the amount of lump sum shall be determined as described in paragraph (7).

- (7) The amount of lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—
 - (a) applying the formula—

3 x (1.4% of the member's Relevant Uprated Earnings x Reduction Factor)

and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(8) In the case of an Optant—

(a) who becomes entitled to an annual amount of pension payable under regulation 180 for the first time; and

(b) on the day the Optant becomes entitled to that pension the Optant has not attained age 60,

the amount of lump sum shall be determined as described in paragraph (9).

(9) The amount of lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—

(a) applying the formula—

3 x (1.4% of the member's Specified Uprated Earnings x Reduction Factor)

and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(10) In the case of an Optant—

(a) who becomes entitled to an annual amount of pension payable under regulation 180 for the first time; and

(b) on the day the Optant becomes entitled to that pension the Optant has attained age 60,

the amount of lump sum shall be determined as described in paragraph (11).

(11) The amount of lump sum that is to be paid to an Optant referred to in paragraph (10) shall be calculated by—

(a) applying the formula—

3 x (1.4% of the member's Specified Uprated Earnings)

and

(b) then rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(12) In the case of an Optant—

(a) who is a pensioner member as respects a pension payable under regulation 180 as described in paragraph (8)(a) of that regulation; and

(b) who—

(i) subsequently exercises an option under that regulation for the second or a final time, or

(ii) becomes entitled to any other pension under Chapter 4 of this Part in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of lump sum shall be determined by the Department after taking advice from the Scheme actuary.

(13) If, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member the amount of the lump sum determined under this regulation shall be reduced by the amount calculated under paragraph (14) (“the pension debit reduction”).

(14) The amount of the pension debit reduction referred to in paragraph (13) shall be calculated by—

(a) applying the formula—

3 x (1995 Section Pension Debit x Increase Factor)

and

(b) rounding up the amount found in sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(15) If any part of an Optant’s benefit under this Section of the Scheme falls to be calculated by reference to capped Optant pensionable earnings under regulation 260I the determinations in this regulation shall apply separately in respect of—

(a) the pension to which the Optant is entitled in respect of the pensionable earnings that falls to be calculated by reference to capped Optant pensionable earnings; and

(b) the pension to which the Optant is entitled in respect of the pensionable earnings that does not fall to be calculated by reference to capped Optant pensionable earnings.

(16) If the benefits of an Optant to whom this regulation applies are subject to the modifications provided for in Part 4—

(a) the amount of—

(i) the lump sum referred to in paragraph (2)(a) and in regulation 136L(2)(a), and

(ii) the reduction in the annual amounts of pension referred to in paragraph (2)(b) and in regulation 136L(2)(b),

will be calculated without regard to those modifications;

(b) if any pension included in the “reference amount” or, as the case may be, the “base amount” referred to in regulations 276(1) and 262 (respectively) and payable to a member under Part 4, will, on the member’s retirement, attract an immediate increase under the Pensions (Increase) Act (Northern Ireland) 1971;

(c) the amount of any lump sum referred to in sub-paragraph (a)(i) that is based on a pension that will attract an immediate increase under the Pensions (Increase) Act (Northern Ireland) 1971, will—

(i) be increased in like manner, and

(ii) give rise to a corresponding increase in the reduction to the corresponding annual amount of pension referred to in sub-paragraph (a)(ii); and

(d) the total of the amounts referred to in sub-paragraph (a)(i) and (a)(ii), together with any increases described in sub-paragraph (c), will apply to the “reference amount” or, as the case may be, the “base amount” referred to in regulations 276(1) and 262 (respectively) payable to a member under Part 4.

(17) For the purposes of this regulation—

“1995 Section Pension Debit” is the amount by which the Optant’s annual pension under the 1995 Regulations was to be reduced in accordance with Article 28 of the 1999 Order;

“annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the Scheme apart from this regulation, together with any increases payable under the Pensions (Increase) Act (Northern Ireland) 1971, calculated as at the time payment would first be due;

“Increase Factor” is the factor that would have applied to the 1995 Section Pension Debit for the purposes of Article 26 of the 1999 Order if the Optant had become entitled to a pension under the 1995 Regulations—

- (a) on the date that the Optant becomes entitled to a pension referred to in paragraph (1)(a); or
- (b) on the day after the Optant’s last day of pensionable service if the Optant becomes entitled to the payment of a transfer value referred to in paragraph (1)(b);

“Relevant Uprated Earnings” are the uprated earnings for the period of practitioner service (expressed in days) equal to the aggregate of—

- (a) the amount of uprated earnings for pensionable service that the Optant is entitled to count under regulation 260C; and
- (b) the amount of additional pensionable earnings for additional service (if any) that the Optant is entitled to count under regulation 260E;

“Reduction Factor” is the reduction factor that the Department, after taking advice from the Scheme Actuary, determines would have applied to that Optant’s lump sum under regulation 17(7)(b) of the 1995 Regulations (Lump sum on retirement) if that Optant had become entitled to a pension calculated under regulation 16 (Early retirement pension (with actuarial reduction)) of those Regulations on the day he became entitled to a pension under regulation 179 or, as the case may be, regulation 180;

“Specified Uprated Earnings” is the amount of the Optant’s Relevant Uprated Earnings multiplied by the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 180(3)(a) (“the specified percentage”).

Nominations and notices accepted by the Department under the 1995 Regulations to apply under Chapter 5 of this Part of these Regulations

260L

- (1) This regulation applies if—
 - (a) the Department has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 Section member; and
 - (b) on the day that the Department receives that person’s option to join this Section of the Scheme, that person has not revoked that nomination or notice.
- (2) The nominations and notices referred to in paragraph (1) are—
 - (a) a nomination made in accordance with regulation 22 of the 1995 Regulations (Payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations 18 to 21 of the 1995 Regulations

- (which deal with lump sum payments on the death of a member in different circumstances);
- (b) a notice provided for the purposes of paragraph (3)(a) of regulation 22 of the 1995 Regulations that the person's surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations 18 to 21 of the 1995 Regulations;
 - (c) a notice provided for the purpose of regulation 31E of the 1995 Regulations (Surviving nominated partner's pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1) shall be treated—
- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Department as a notice for the purposes of regulation 214;
 - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Department as a notice for the purposes of regulation 214 specifying that the Optants personal representatives are to receive any lump or pension on the death of the Optant; and
 - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Department as a declaration for the purposes of regulation 195.

2008 Section Optants: Transitional Tier 2 ill-health pension

260M

- (1) This regulation applies to a 2008 Section Optant—
- (a) who has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations; and
 - (b) that form and supporting medical evidence was received by the Department before the date on which the Department received the Optant's option to join this Section of the Scheme.
- (2) If the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 182(3) ("a tier 2 ill-health pension") within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received—
- (a) that Optant's pensionable service shall be increased by the enhancement period determined in accordance with paragraph (3) ("the transitional enhancement period"); and
 - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 182(6).

This is subject to paragraph (5).

- (3) In this regulation—
- (a) "the transitional enhancement period" means two-thirds of the Optant's assumed pensionable service; and
 - (b) "the Optant's assumed pensionable service" means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching the age of 60.

This is subject to paragraph (4).

(4) If the transitional enhancement period determined under paragraph (3) is less than four years pensionable service, the transitional enhancement period by which the Optant's pensionable service is increased shall be the lesser of—

- (a) four years pensionable service; and
- (b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching the age of 60.

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 182 are to be read as references to the “transitional enhancement period” determined under this regulation.

Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section

260N

(1) This regulation applies to a 2008 Section Optant—

- (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 182; and
- (b) that form and supporting medical evidence is received by the Department before the end of the period of one year commencing on the day the Department received the Optant's option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1) an Optant referred to in that paragraph becomes entitled to a pension under regulation 182(3) (“a tier 2 ill-health pension”)—

- (a) that Optant's pensionable service shall be increased by the enhancement period determined in accordance with whichever of paragraph (3) or (4) of regulation 260M apply to the Optant; and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 182(6).

This is subject to paragraph (3).

(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 182 are to be read as references to the “transitional enhancement period” determined under this regulation.

Application of regulation 183 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

260O

(1) This regulation applies to a 2008 Section Optant—

- (a) who submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and

- (b) that form and supporting medical evidence was received by the Department before the date on which the Department received the Optant's option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 182(2) ("a tier 1 ill-health pension")—

- (a) within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received; and
- (b) immediately before joining this Section of the Scheme the Optant was notified under regulation 13B of the 1995 Regulations (Re-assessment of ill-health condition determined under regulation 13A) that the Optant may ask the Department to consider whether that Optant subsequently meets the tier 2 condition under that regulation,

that Optant shall be entitled to a re-assessment of entitlement to an ill-health pension determined under regulation 183 in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 182(3)(a) at the date of the Department's review, "permanently" shall mean until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 183, the Department determines that the Optant meets the condition in 182(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 182 but which shall be calculated in accordance with paragraph (5).

(5) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (4)

- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 260M apply to that Optant; and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 182(6).

This is subject to paragraph (6).

(6) In the case of an Optant to whom this regulation applies—

- (a) regulation 260M shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Department's determination under regulation 183" after "continued in service"; and
- (b) references to the "enhancement period" in regulation 182 are to be read as references to the "transitional enhancement period" determined under this regulation.

Application of regulation 183 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

260P

(1) This regulation applies to a 2008 Section Optant—

- (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 182;
 - (b) that form and supporting medical evidence was received by the Department before the end of the period of one year commencing on the day the Department received the Optant's option to join this Section of the Scheme; and
 - (c) following a consideration of the form and medical evidence referred to in subparagraph (a)—
 - (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 182, and
 - (ii) at the time the Optant is awarded a pension under that regulation the Department gives the Optant notice in writing in accordance with regulation 183(1)(b) that the Optant's case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 182(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 183, the Department determines that the Optant meets the condition in 182(3)(a), then as from the date on which that determination is made the Optant—
- (a) ceases to be entitled to a tier 1 ill-health pension; and
 - (b) becomes entitled to a tier 2 ill-health pension under regulation 182 but which shall be calculated in accordance with paragraph (3).
- (3) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (2) —
- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 260M apply to that Optant; and
 - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 182(6).
- This is subject to paragraph (4).
- (4) In the case of an Optant to whom this regulation applies—
- (a) regulation 260M shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Department's determination under regulation 183" after "continued in service"; and
 - (b) references to the "enhancement period" in regulation 182 are to be read as references to the "transitional enhancement period" determined under this regulation.

Late payment of pension with actuarial increase for a 2008 Optant

260Q

- (1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 176 after reaching the age of 65.
- (2) In the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—

- (a) the pensionable service and earnings that Optant is entitled to count under—
 - (i) regulation 260C,
 - (ii) regulation 260E (if any), and
 - (iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65; and
- (b) any contributions paid under regulations 165, 167 or 168 before reaching that age, shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

- (3) In paragraph (2) the reference to the amount of the pension is to the amount of pension—

- (a) before that pension had been reduced in accordance with regulation 260K; and
- (b) before any commutation under regulation 185.

- (4) The amount of the increase referred to in paragraph (2) must be calculated in accordance with guidance and tables provided by the Scheme actuary to the Department for the purposes of this regulation.

- (5) In preparing that guidance and those tables the Scheme actuary must use such factors as the Scheme actuary considers appropriate, having regard, in particular, to—

- (a) the period after reaching the age of 65 before the Optant becomes entitled to immediate payment of the pension; and
- (b) the life expectancy of the Optant.

- (6) The increase shall apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 178.

Transitional Provision: Treatment of additional service and pensionable earnings in respect of Optants retiring on the grounds of ill Health

260R

- (1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 260E.

- (2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence if not included on the form pursuant to regulation 13A of the 1995 Regulations (Ill-health pension on early retirement);
- (b) that form and supporting medical evidence was received by the Department before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 72 of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to those Regulations (Paying for additional service or unreduced retirement lump sum by regular additional contributions); and
- (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 182 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

that Optant will not be entitled to count a period of pensionable service under regulation 260E and—

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect of that period of additional service shall be returned to the Optant in accordance with regulation 73(2) of the 1995 Regulations (Part payment for additional service or unreduced retirement lump sum), and
 - (ii) paragraph (8) of regulation 260E will not apply.
- (3) If—
- (a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation 13A of the 1995 Regulations;
 - (b) that form and supporting medical evidence was received by the Department after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 72 of the 1995 Regulations; and
 - (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 182 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 260E, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4).

(4) The period of pensionable service that an Optant is entitled to count under this regulation shall be a period of service equal to the difference between—

- (a) the period of service the Optant is entitled to count under regulation 260E; and
- (b) the period of service the Optant elected to purchase under regulation 67 of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to those Regulations calculated in accordance with regulation 73(3) of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to those Regulations and as if the member had become entitled to a pension under regulation 13A of those Regulations on the day the Department received that person's option to join this Section of the Scheme.

(5) For the purposes of calculating the Optant's benefits under this Section of the Scheme, the pensionable service the Optant is entitled to count under paragraph (4) will be added to the service the member is entitled to count under regulation 260C(3).

Treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable

260S

(1) This regulation applies if a 2008 Section Optant who becomes a member of this Section of the Scheme—

- (a) is entitled to benefits under this Part;
- (b) has a period, or periods, of officer service under Part 2 that entitles the Optant to have benefits considered under Part 4; and
- (c) has transferred—

- (i) service up to 31st March 2008 from the 1995 Section that counts under regulation 136C, or
 - (ii) service and superannuable earnings up to 31st March 2008 from the 1995 Section that counts under regulation 260C.
- (2) If paragraph (1) applies—
- (a) superannuable service transferred from the 1995 Section under regulation 136C(4) will count at the full length determined before application of the factor specified in that regulation, for the purpose of comparing benefits payable as calculated in accordance with regulations 264 to 269A;
 - (b) superannuable service transferred from the 1995 Section under regulation 136C(4) and superannuable earnings transferred from the 1995 Section under regulation 260C(4) will count at the length or value determined after the application of the factor specified in those regulations for the purpose of calculating—
 - (i) any reference amount referred to regulations 264 to 269A, and
 - (ii) any top up amount referred to in regulation 273 or, as the case may be, 274.

This is subject to paragraphs (4) and (5).

- (3) This paragraph applies if a 2008 Section Optant has—
- (a) officer service that counts under regulation 136C(4); or
 - (b) pensionable earnings in respect of practitioner service that counts under regulation 260C(4); and
 - (c) that officer service or those pensionable earnings comprise two or more periods (separated by at least one day) of such service or two or more periods (separated by at least one day) in respect of which such earnings were earned.
- (4) Where paragraph (3) applies, each separate period of officer service or each separate period in respect of which pensionable earnings were earned, shall be calculated using the formula set out in paragraph (5) for the purposes of calculating—
- (a) any reference amount referred to in regulations 264 to 269A; and
 - (b) any top up amount referred to in regulation 273 or, as the case may be, 274.
- (5) That formula is—
- (a) where paragraph (3)(a) applies—

$$TNS \times \frac{PGS}{TGS}$$

where—

TNS is the total (net) service transferred to this Section of the Scheme under paragraph (4) of regulation 136B, after multiplying by the factor applicable to the case,

PGS is any part (gross) period of service within the total transferred to this Section of the Scheme under paragraph (4) of regulation 260C, before multiplying by the factor applicable to the case, and

TGS is the total (gross) service transferred to this Section of the Scheme under paragraph (4) of regulation 136C;

- (b) where paragraph (3)(b) applies—

$$\frac{PGE}{TNE \times \text{---}} \\ TGE$$

where—

TNE is the total net uprated pensionable earnings transferred to this Section of the Scheme under paragraph (4) of regulation 260C, after multiplying by the factor applicable to the case,

PGE is any part gross amount of uprated pensionable earnings within the total transferred to this Section of the Scheme under paragraph (4) of regulation 260C, before multiplying by the factor applicable to the case, and

TGE is the total gross amount of uprated pensionable earnings transferred to this Section under paragraph (4) of regulation 260C.

Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 260B

260T

- (1) This regulation applies to a person who—
 - (a) on, or after, 1st October 2009—
 - (i) is an active member of the 1995 Section, or
 - (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation 65 of the 1995 regulations (Absence because of illness or injury or certain types of leave);
 - (b) has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement);
 - (c) that form and supporting medical evidence was received by the Department—
 - (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 260C, or
 - (ii) if such a statement has been issued to that person, before the date specified by the Department for the purposes of paragraph (3) of that regulation.
- (2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).
- (3) The option under paragraph (2) may only be exercised if—
 - (a) the person gives notice in writing to the Department in such form as it requires; and
 - (b) that notice is received by the Department within a period of four months starting with, where—
 - (i) that person is sent a written notification of the Department's decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation 13A of the 1995 Regulations ("the first decision"), the date of that decision,

- (ii) that person is sent a written notification of the Department’s decision in respect of the stage one dispute, (“a stage one decision”), the date of that decision,
- (iii) that person is sent a written notification of the Department’s decision in respect of the stage two dispute, (“a stage two decision”), the date of that decision, or
- (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

- (4) Paragraph (3) shall cease to apply to any person if at any time that person—
 - (a) returns to practitioner service; or
 - (b) claims a pension under regulation 16 or 49 of the 1995 Regulations (which deal with an early retirement pension (with actuarial reduction) and preserved pensions respectively).

- (5) For the purpose of this regulation—

“stage one dispute” means a request made to the Department for a review of the first decision under Article 50 of the 1995 Order (Resolution of disputes), that is received by the Department within a period of one year starting with the date on which that person’s contract of employment is terminated;

“stage two dispute” means a request made to the Department to review the stage one decision under Article 50 of the 1995 Order that is received by the Department within a period of six months starting with the day on which that person is sent a written notification of a stage one decision;

“the final determination by the Pensions Ombudsman” means a written determination under section 147 of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage two decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage two decision.

2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation 13A of the 1995 Regulations

260U

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
 - (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 182 in respect of service in this Section of the Scheme (“the later 2008 Section service”).
- (2) For the purposes of determining whether an Optant can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.
- (3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 182, to—
 - (a) a tier 1 ill-health pension; or
 - (b) a tier 2 ill-health pension,

in respect of the later 2008 Section service, the Optant is entitled to the benefits set out in paragraph (4).

- (4) The benefits mentioned in paragraph (3) are—
- (a) the member's tier 1 ill-health pension under regulation 13A of the 1995 Regulations in respect of the member's earlier 1995 Section service; and
 - (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member's later 2008 Section service.

This is subject to paragraph (5) and regulations 260M to 260P and 260R.

- (5) If the Optant—
- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service;
 - (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation 13B of the 1995 Regulations (Re-assessment of ill health condition under 13A); and
 - (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of later 2008 Section service on the termination of that later service,

the Optant is entitled to the benefits set out in paragraph (6).

- (6) Those benefits are—
- (a) a tier 2 ill-health pension paid in accordance with regulation 13B of the 1995 Regulations in respect of the earlier 1995 Section service; and
 - (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation 13A of the 1995 Regulations

260V

(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—

- (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section; and
- (b) is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of an Optant referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant; and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 210.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 180, the lump sum referred to in paragraph (2)

(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 182(5), if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 176, if the deceased Optant had reached the age of 65,

to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 180, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

(a) payable under regulation 182(5), if the deceased Optant had not reached the age of 65; or

(b) payable under regulation 176, if the deceased Optant had reached the age of 65, to which the Optant would have been entitled on the last day of the Optant’s pensionable service.

(5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 180, the lump sum referred to in paragraph (2)(a) shall be determined by the Department after taking advice from the Scheme actuary.

Children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation 13A of the 1995 Regulations.

260W

(1) This regulation applies to a 2008 Section Optant (“a deceased Optant”) who, in respect of service in this Section of the Scheme, was—

(a) at the date of the Optant’s death—

(i) an active member,

(ii) a non-contributing member,

(iii) a pensioner member, or

(iv) a deferred member; and

(b) on that date was entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”).

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), “the basic death pension” for the purposes of paragraph (3) of regulation 203 shall have the meaning given in paragraph (3).

(3) The “basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 176 and—

(a) in the case of a deceased Optant who was, at the date of the Optant’s death, an active member that pension will include the greater of—

(i) any increase due to such enhancement period that would have applied for the purposes of regulation 182(5) if the deceased Optant had become entitled to a tier 2 ill-health pension at that date, and

(ii) the deceased Optant’s later 2008 Section service as an active member plus the difference between—

(aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service as an active member, and

(bb) 10 years pensionable service,

where the amount of service in paragraph (aa) is less than that specified in paragraph (bb);

(b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the Scheme on the date of that Optant’s death.

(4) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of paragraph (3) of regulation 204 shall have the meaning given in paragraph (5).

(5) The “basic death pension” means the greater of—

- (a) twice the appropriate proportion of the deceased Optant’s annual pension (disregarding any additional pension); and
- (b) twice the appropriate proportion of the annual pension to which the deceased Optant would have been entitled calculated as the aggregate of the deceased Optant’s later 2008 Section service plus the difference between—
 - (i) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service, and
 - (ii) 10 years pensionable service,

where the amount of service in head (i) is less than that specified in head (ii).

(6) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of paragraph (3) of regulation 205 shall have the meaning given in paragraph (7).

(7) The “basic death pension” means—

- (a) if the deceased Optant died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 203 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension); and
- (b) if the deceased Optant died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
 - (i) twice the appropriate proportion of the pension to which the deceased Optant 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 annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service that has been deferred plus the difference between—
 - (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service that has been deferred, and
 - (bb) 10 years pensionable service,

where the amount of service in paragraph (aa) is less than that specified in paragraph (bb).”.

Amendment of regulation 262

97. In regulation 262 (Interpretation: general)—

- (a) at the appropriate place in the alphabetical order, insert—
 - ““calculation method D” means the calculation method provided for in regulation 272A;
 - “increment period” has the meaning given in regulation 272A(2);”;
- (b) omit the definition of “principal medical practitioner”.

Amendment of regulation 263

98. In paragraph (2)(a) and (b) of regulation 263 (Application of Chapter 2), omit “principal”.

Amendment of regulation 264

99. In paragraph (1) of regulation 264 (Cases with up to 10 years officer service), omit “principal”.

Amendment of regulation 265

100. In regulation 265 (Cases with more than 10 years officer service), omit “principal”.

New regulation 269A

101. After regulation 269 (Cases with 1 year or more of concurrent officer service), insert—

“Non-concurrent Officer and Practitioner Service

Cases with non-concurrent officer service between periods of practitioner service

269A

(1) Where a member who, before commencing the member’s final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—

- (a) that officer service is preceded by an earlier period of practitioner service; and
- (b) some or all of the member’s officer service is not concurrent with practitioner service,

the reference amount in respect of such part of that officer service that is not concurrent with practitioner service shall be the better of—

- (i) the amount determined by calculation method D, and
- (ii) the base amount.”.

Amendment of regulation 270

102.—(1) Regulation 270 (Calculation method A) is amended as provided by paragraphs (2) and (3).

(2) Before “Calculation method A”, insert paragraph number “(1)”.

(3) After the newly numbered paragraph (1), add—

“(2) Where paragraph (1) applies—

- (a) the member is entitled to count part of the period of officer service referred to in that paragraph as a result of a transfer-in under regulation 229; and
- (b) the transfer-in is other than a transfer-in referred to in regulation 230(6),

for the purposes of any calculation under regulation 264(1)(a) or 265(a), the amount of the pensionable pay deemed to be received in respect of that part period of officer service will be calculated in accordance with regulation 230(2).”.

New regulation 272A

103. After regulation 272 (Calculation method C), add—

“Calculation method D

272A

(1) Calculation method D is the aggregate of the amounts payable under paragraphs (2), (3) and (4).

(2) The amounts payable under this paragraph are the additional amount that would be payable under Part 2 for the member’s period, or periods, of non-concurrent officer service (described in regulation 269A of this Part) in respect of the member’s pension and any retirement lump sum payable—

- (a) as a result of the member exercising the option under regulation 185, and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 260K,

if those amounts were each subject to a 1.5% increase for each whole year or part of a year within the increment period.

This is subject to paragraph (5).

(3) The amounts payable under this paragraph are the amounts that would be payable under Part 2 for the member’s period, or periods, of non-concurrent officer service (described in regulation 269A of this Part), were it not for the additional amounts calculated under paragraph (2).

(4) The amounts payable under this paragraph are the amounts payable under Chapter 4 of Part 3.

(5) For the purposes of paragraph (2)—

- (a) the increase referred to in that paragraph shall—
 - (i) be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act (Northern Ireland) 1971(16), and
 - (ii) be effective immediately before the pension and lump sum become payable with the member’s benefits from practitioner service under Chapter 4 of Part 3; and
- (b) the increment period referred to in paragraph (2) shall—
 - (i) begin with the day immediately following the day on which the officer service referred to in paragraph (2) ceased for the last time, and
 - (ii) end with the day immediately before the pension and retirement lump sum become payable with the member’s benefits from practitioner service under Chapter 4 of Part 3.”.

Amendment of regulation 273

104. In paragraphs (1) and (2) of regulation 273 (Top-up where reference amount greater than base amount) for “269”, substitute “269A”.

Schedule

105. Schedule 2 shall have effect.

PART 4

AMENDMENT OF THE HEALTH AND PERSONAL SOCIAL SERVICES (COMPENSATION FOR PREMATURE RETIREMENT) REGULATIONS (NORTHERN IRELAND) 1983

Amendment of the Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983

106.—(1) The Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983(17) shall be amended as provided by paragraph (2).

(2) In Regulation 5 (Crediting of additional period of service)—

- (a) in paragraph (1A) for “1st October 2008” substitute “1st October 2009”;
- (b) for paragraph (1D) substitute—

“(1D) Paragraphs (1E) to (1H) shall apply where an entitled officer becomes so entitled on, or after, 1st October 2009 but before 1st October 2011.

(1E) The additional period of service an entitled officer shall be credited with where regulation 5(5A) does not apply to him at 30th September 2006, shall be equal to U and determined by the formula—

$$S - T = U$$

Where—

S (except where paragraph (1F) applies) is the additional service he would have been credited with applying paragraph (1)(a) or, as the case may be, (1)(b) to his service at 30th September 2006 as if he became so entitled at that date; and

T is the period commencing on, or after, 1st October 2006 and ending on the day on which he does in fact become so entitled.

(1F) For the purposes of paragraph (1E) only, where the additional service an entitled officer would have been credited with applying paragraph (1)(a) or, as the case may be, (1)(b) to his service at 30th September 2006 as if he became so entitled at that date is greater than 5 years (but not otherwise)—

- (a) the excess over 5 years shall be reduced at the rate of 1/24th for each complete month commencing on, or after, 1st October 2009 and ending on the date on which he does in fact become so entitled (with any part day being rounded up to the nearest whole day) (“the relevant fraction”); and
- (b) the result shall be S.

(1G) Where regulation 5(5A) does apply to an entitled officer as at 30th September 2006—

- (a) the additional period of service he shall be credited with shall be equal to S (as defined in paragraph (1E)); and
- (b) the amount of compensation payable to him shall be determined in accordance with that regulation except that the “relevant amount” referred to in that regulation shall be reduced by amount X.

(1H) Amount X shall be—

- (a) V (except where sub-paragraph (b) applies);

- (b) the product of V+W where the additional service a member would be credited with applying paragraph (1)(a) or, as the case may be, (1)(b) to his service at 30th September 2006 as if he became so entitled at that date is greater than 5 years (but not otherwise),

where—

$$V = (\text{the relevant amount } x \frac{1825}{S \text{ (in days)}} \times \frac{T \text{ (in days)}}{1825})$$

$$W = (\text{the relevant amount } x \frac{(S \text{ (in days)} - 1825)}{S \text{ (in days)}} \times \text{the relevant fraction})$$

and S and T have the same meaning as in paragraph (1E).

(1I) Where it is more beneficial to an entitled officer to whom paragraphs (1A) to (1C) of this regulation apply—

- (a) those paragraphs shall be ignored; and
- (b) he shall be credited with additional service calculated by applying paragraph (1)(a) or, as the case may be, (1)(b) to his service at 30th September 2006 and as if he became so entitled at that date.”.

PART 5

AMENDMENT OF THE HEALTH AND PERSONAL SOCIAL SERVICES (SUPERANNUATION) (ADDITIONAL VOLUNTARY CONTRIBUTIONS) REGULATIONS (NORTHERN IRELAND) 1999

Amendment of the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999

107.—(1) The Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999⁽¹⁸⁾ shall be amended as provided by paragraphs (2) and (3).

(2) In regulation 20 (Loss of rights to benefits) after “1995 Regulations”, add “or regulation 130 or 254 of the 2008 Regulations”.

(3) In Schedule 2 (Pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership)—

- (a) in paragraph 6(1) for “described in regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations (Northern Ireland) 2000 (Commutation of the whole of pension credit benefit)” substitute “referred to in paragraphs (b), (e) and (f) of the lump sum rule in section 166(1) of the Finance 2004 Act⁽¹⁹⁾”;
- (b) in paragraph 14(1)(b) (Loss of rights to benefits), for “of those Regulations” substitute “of the 1995 Regulations or regulation 130 or 254 of the 2008 Regulations”.

⁽¹⁸⁾ S.R. 1999 No. 294

⁽¹⁹⁾ 2004 c. 12

PART 6

Miscellaneous

Option to persons detrimentally affected by these Regulations

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

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

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

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

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 28th January 2010.

L.S.

Diane Taylor
A senior officer of the
Department of Health, Social Services and
Public Safety

The Department of Finance and Personnel consents to the foregoing Regulations.
Sealed with the Official Seal of the Department of Finance and Personnel on 28th January 2010.

L.S.

Adrian Arbuthnot
A senior officer of the
Department of Finance and Personnel

SCHEDULE 1

Regulation 12

PART 1

1. In the following provisions before “the Scheme”, insert “this Section of”—

(a) regulation

2 in the definition of— (i) employing authority (at paragraph (e)) (ii) member (twice) and (iii) normal benefit age (iii)	43(1)	81(2) (three times), (3) and (4)
2A(10), (11) and (12)	45(1) and (3)	82(5)
3(3) (twice), (3A) and (4)	46 in the heading and in (1) (four times)	83B(1)
4(1) (twice) and (2)	47 in the heading and in (1)	84(2)
5(4A) and (6)	48(2) (twice)	85(2), (4), (5), (14) (in the definitions of “continuing employment” and “pension”) and (15) (twice)
6 in the heading and in (1), (2), (3) (three times), (3A) and (4) (twice)	49(1)	89
7(1) (five times), (3) and (6)	50(3) (twice) and (7) 51(3)	90(1), (2) and (3) 93(1)
8 in the heading and in (1), (2) (twice) and (3) (twice)		
9 in the heading and in (1) (twice), (1A), (3) (three times), (5) (three times), (5A) (four times), (6) and (7)	52(1), (5)	94(3)
9A in the heading (1) (twice), (2), (3) and (4)	53(1), (2) and (6)	

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(a) regulation			
	10(1), (2D), (2W), (2X), (2Y) and (2Z)	54(1)	
	11(1) and (2)	55(1) and (2)	
	13(11)	57(4) and (7)	
	13A(11)	59(1), (3), (10) (twice), (12) and (14) (twice)	
	19(1) and (8)	60 in the heading and in (1), (3) (twice) and (4)	
	20(1)	62(2)	
	22(6) (twice) and (9)	62A in the heading and in (2) (three times), (3) (three times) and (5) (three times)	
	23(3)	65(2), (3) and (5)	
	24(3), (4) and (5)	66(1) (twice) and (2) (twice)	
	25(1)	67(1), (4), (6A), (6B) (9) and (11) (in the definition of “pension debit member”)	
	26(2) and (2A)	68(1)	
	28(3)	70(1)	
	31G(1)	71(1)	
	34(2) and (2A)	72(6)	
		73B in the heading	
	35(1)	75(1) and (4)	
	36(2A)	76(1) (twice)	
	39(1), (4) and (7)	77(2) (twice) and (12)	
	40(4)	79(4)	
(b) Schedule 2 paragraph	2(2)	9A(2)	18(1) and (2) (twice)
	2A(1), (2) and (4)	10 in the heading and in (18)	21(2) (twice), (3) (twice) and (5)
	4(1)	11A(1) and (2)	22(3), (4) and (5)
	9(4), (6), (6A) and (11)	14(2)	23(6) (twice) and (8)
(c) Schedule 2A paragraph	3(1)	7(1) and (6)	9(d)

(a) regulation

6(1) 8 (twice)

PART 2

2. In the following provisions for “2008 Scheme” substitute “2008 Section”—

regulation

2 in the definition of “2008 Scheme” 7(1) and (2)	49(14) (“in the definition HSC employment”)	59 in the heading and in (3), (7), (12) and (14) (three times)
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PART 3

3. In regulation 42 for “The Scheme”, substitute “This Section of the Scheme”.
4. In regulation 63(1) and 81(5) for “this Scheme”, substitute “this Section of the Scheme”.

SCHEDULE 2

Regulation 105

PART 1

1. In the following provisions before “the Scheme”, insert “this Section of”—

regulation

6(1) in the definition of— (i) active member (ii) deferred member (iii) non-contributing member (at paragraph (b)) (iv) pensioner member (iv) public sector transfer arrangements.	132(2) and (7)(a)	255(1)
6(2)		
6(3)		
7(1)(a)	135(1) and (2)	256(2) and (7)(a)
9(2), (3), (3A), (4)(a)(ii), (6)(c), (9)	136(6) (twice) and (8)	259(1) and (2)
10(1)(f) (twice), (3)(b)	137(1) in the definition of—	260(5)(b) (twice) and (8) (twice) and (10)

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regulation

	(i) active member
	(ii) deferred member
	(iii) non-contributing member (at paragraph (b))
	(iv) pensioner member
	(v) public sector transfer arrangement
11(4)(a), (6)(b)	138(1), (2)
12(2)	139(1)(a)
13(1)	140(2), (3), (3A)(4)(a)(ii), (6)(c) and (9)
14(10)	141(1)(e) (twice) and (3)(a)
17(1)	142(4)(a) and(6)(b)
20(8), (9)(b), (10)	144(2)(a), (7) and (10)
21(1)	152(8), (9)(b), (10)
22(1), (2), (3), (5) (twice), (6), (7) and (8)	153(1), (5)(e)(ii)
23(1), (6)	154(1), (2), (3) (twice), (4), (5), (6), and (7)
24(1), (3) and in the heading	155
25(1), (6)(b) and in the heading	156(1), (3) and in the heading
26(1) and (2) (twice) and in the heading	157(1), (6)(b), (7) (twice) and in the heading
27(1), (11)(a) and (14)	158(1) and (2) (twice) and in the heading
29(3)(a), (22)(c), (23)(c), (24)(c), (25)(c) and (27) (twice)	159(2)
	160(1) and (3)
	162(1) (twice), (2) and (4)
31(1) (twice), (2)(b) and (4)	164(20)(a)
35 in the heading	166 in the heading
44(5) (twice) and (9)	175(5) (twice) and (9)

regulation

50(5)	
56(3) (three times) and (7)(a)	181(4) 185(1)
57(6)(a)	
58(1)	189(1), (2) and (6)(c)
62(1), (2) and (6)(c)	192(1) and (5)(a)
65(1) and (5)(a)	193(1) (twice), (2)(a)
66(1) (twice), (2), (7) (three times), (9) and (10)(a)	and (7) (three times) 196(4)(b)
69(4)(b)	199(1)(a)
72(1)(a)	203(1)
76(1)	204(1)
77(1)	205(1)
78(1)	208(1)
81(1)	218(1)(a) and (5)(i)
91(1)(a), (5)(i)	219(1)
92(1)	220(3)(a) and (4)
93(3)(a) and (4)	221(1)
94(1)	223(3)(a)
99	226
100(1)	227(1)
101(1)(c) and (3)	228(1)(c)
102(2)(a)	230(6) (twice)
103(6) (twice)	233(1)(b)
106(1)(b)	234(1)(c), (2) and (3)
107(1)(c), (2) and (3)	235(2)
109(1) (four times) and (6) and in the heading	236(1) (four times) and (6)
111(1)(a)	238(1)(a)
115(1)(a) and (4)	239(5)(b)
118(1)(a)	241(2)(a) and (5)
128(1) (twice)	244(1)(a)
130(2)(a)	252(1) (twice)

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regulation	
131(1)	254(2)(a)

PART 2

2. In the following provisions for “HPSS Superannuation Scheme 1995” substitute “1995 Section”—

regulation			
7(8) (twice)	108A(1) and in the heading	154(1)(a) and (c)	
10(1)(b) and (f)(ii)	139(9) (twice)	235A(1) and (4)(a) and in the heading	
21(3)(b), (5)(a), (d), (e) and (f) and in the full out words and (6)(a)	141(1)(b)	275(5) (twice)	
22(2) (twice)	153(3)(b), (5) (seven times), (6)(a)		

PART 3

3. In the following provisions for “that Scheme”, substitute “that Section”—

regulation	
7(8) (twice)	153 (nine times)
21(5) (nine times)	154(1) (three times)
22(2) (twice)	275(5) (twice)

4. In regulation 21(3) and (5) and 153(3) and (5) for “other scheme conditions”, substitute “other Section conditions”.

5. In regulation 108A(1), (2)(c), (3)(a) and (b) and (4)(a), and 235A(1), (2)(c), (3)(a) and (b) and (6)(a) and (c) after “this” insert “Section of the”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 95) (“the 1995 Regulations”), the Health and

Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 (S.R. 2008 No. 256) (“the 2008 Regulations”), Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983 (S.R. 1983 No. 155) (“the Compensation Regulations”), and the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 (S.R. 1999 No. 294) (“the AVC Regulations”).

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from various dates before the date of commencement. Article 14(1) of the Superannuation Order 1972 provides authority for the regulations specified in regulation 1(3) to (4) to take effect as from a date earlier than the making of these Regulations.

The remainder of the Regulations are divided into six Parts, with Parts 2 to 5 amending the 1995 Regulations, the 2008 Regulations, the Compensation Regulations and the AVC regulations respectively, and Part 6 providing that certain persons detrimentally affected by these Regulations may elect for the provisions not to apply to them.

Parts 2 and 3 make similar amendments in respect of both the 1995 Regulations and the 2008 Regulations. They also introduce amendments specific to either the 1995 Regulations or the 2008 Regulations.

The changes dealing with similar issues in Parts 2 and 3—

- introduce changes as to when a person may contribute or accrue further service in the Scheme (regulations 11, 97 to 101, 103 and 104);

- clarify the way in which pensionable earnings will be determined if a member has officer service before practitioner service that was the result of a transfer-in of benefits to the Scheme (regulations 11(2)(e) and 102);

- make changes in terminology to reflect the fact that there is one HSC Pension Scheme consisting of two sections (the 1995 Section and the 2008 Section) (regulations 4, 12 (and Schedule 1), 15, 16, 20, 56 and 105 (and Schedule 2)).

The changes specific to Part 2, amend the provisions relating to—

- entitlement to a higher tier ill-health pension where a member is a pensioner member of the 1995 Section and an active member of the 2008 Section of the Scheme (regulation 5);

- the benefits to be paid following the death of a 1995 Section pensioner who is also a member of the 2008 Section (regulations 6 and 9).

The amendments in Part 2 also deal with minor technical amendments relating to pensions for surviving nominated partners (regulation 7) and for death in employment (regulation 8).

The changes specific to Part 3 are—

- the amendment of the provisions relating to—

 - ill-health pensions (regulations 33(2) and 74(2))

 - circumstances in which the “host Board” is deemed to be the employer of general medical and dental practitioners and non-GP providers (regulations 16, 22 and 56)

 - eligibility for membership of the 2008 Section (regulation 62)

 - the treatment of transfer values under former schemes received by the Scheme in respect of practitioner members (regulations 91 to 94 and 102)

 - the introduction of the provisions relating to the “Choice Exercise” under which a 1995 section member may opt to join the 2008 Section of the Scheme (“a 2008 Section Optant”) and the terms on which he may do so and the effect on benefits of doing so (Part 2 Chapter 10 and Part 3 Chapter 10 inserted by regulations 55 and 96 respectively).

A number of amendments that are also consequential upon the insertion of new Chapters 10 of Part 2 and 3 are also made (16 to 19, 21, 23 to 54, 57 to 61, 63 to 90 and 95).

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Part 4 amends regulation 5 (Crediting a period of additional service) of the Compensation regulations, in respect of the calculation of additional periods of service for those who are made redundant on or after 1st September 2009 but before 1st October 2011 (regulation 106, new paragraphs 1D to 1H).

The changes made to the AVC regulations by Part 5, are the insertion of a cross references to the 2008 regulations and to reflect the lump sum rule in section 166(1) of the Finance act 2004. (regulation 107).

Part 6 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into operation of these Regulations (regulation 108).