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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 224**

**The National Health Service Pension  
Scheme (Scotland) Regulations 2008**

**PART 2**

**BENEFITS FOR OFFICERS**

**CHAPTER 2.A**

**INTRODUCTION**

*General interpretation*

**Interpretation: general**

**2.A.1.—(1)** In this Part—

“the 1978 Act” means the National Health Service (Scotland) Act 1978<sup>(1)</sup>;

“the 1993 Act” means the Pension Schemes Act 1993<sup>(2)</sup>;

“the 1995 Act” means the Pensions Act 1995<sup>(3)</sup>;

“the 1995 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 1995;

“the 1997 Act” means the National Health Service (Primary Care) Act 1997<sup>(4)</sup>;

“the 1999 Act” means the Welfare Reform and Pensions Act 1999<sup>(5)</sup>;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003<sup>(6)</sup>;

“the 2004 Act” means the Finance Act 2004<sup>(7)</sup>;

“the 2004 Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004<sup>(8)</sup>;

“active member” has the meaning given in section 124(1) of the 1995 Act and, except where the context otherwise requires, refers to membership of the scheme (but see regulation 2.D.5(9) (partial retirement (members aged at least 55)));

“additional pension”, in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions

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(1) 1978 c. 29.

(2) 1993 c. 48.

(3) 1995 c. 26.

(4) 1997 c. 46.

(5) 1999 c. 30.

(6) S.I.2003/1250. Article 8 was amended by S.I. 2007/3101, regulation 40(b).

(7) 2004 c. 12.

(8) S.S.I. 2004/115 as amended by S.S.I. 2004/215.

made under regulations 2.C.8 (member’s option to pay additional periodical contributions to purchase additional pension), 2.C.10 (member’s option to pay lump sum contribution to purchase additional pension) and 2.C.11 (payment of additional lump sum contributions by employing authority);

“additional services” has the meaning given in regulation 3.A.1 (interpretation of part 3: general);

“bank holiday” means any day that is specified or proclaimed as a bank holiday, pursuant to section 1 of the Banking and Financial Dealings Act 1971<sup>(9)</sup>;

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

- (a) announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 of the Bank of England Act 1998<sup>(10)</sup> is in force, any equivalent rate determined by the Treasury under that section;

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act<sup>(11)</sup> (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) and “buy out” must be read accordingly;

“capped transferred-in service” must be read in accordance with regulation 2.F.12 (meaning of “capped transferred-in service”);

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

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

“certification services” means services related to the provision of the medical certificates listed in Schedule 3 (list of prescribed medical certificates) to the 2004 Regulations;

“collaborative services” means primary medical services provided by a GP performer, a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider under or as a result of an arrangement between—

- (a) Scottish Ministers or a Health Board; and
- (b) a local authority, under section 15(2)<sup>(12)</sup> of the 1978 Act (supply of goods and services to local authorities, etc.), under which Scottish Ministers are or the Health Board is responsible for providing services for purposes related to the provision of health care;

“commissioned services” means services provided under a contract between—

- (a) a GP performer, a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider; and
- (b) either—
  - (i) a Special Health Board, which relates to the provision of health care; or
  - (ii) Scottish Ministers or a Health Board under section 16(1)(3) of the 1978 Act (assistance to voluntary organisations)<sup>(13)</sup>,

which is for the purposes of the health service;

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<sup>(9)</sup> 1971 c. 80. There are amendments to section 1 not relevant to these Regulations.

<sup>(10)</sup> 1998 c. 11.

<sup>(11)</sup> Section 19 was amended by S.I. 2007/3014, regulation 2(a).

<sup>(12)</sup> Section 15 was relevantly amended by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#).

<sup>(13)</sup> To which there are amendments not relevant to these Regulations.

“contracting Health Board” means–

- (a) in the case of a non GP provider who is–
  - (i) a partner in a partnership that–
    - (aa) is a GMS practice;
    - (bb) has entered into a section 17C agreement; or
    - (cc) is an HBPMS contractor and has entered into a contract for the provision of primary medical services;
  - (ii) a shareholder in a company limited by shares that is–
    - (aa) a GMS practice;
    - (bb) a section 17C agreement provider; or
    - (cc) an HBPMS contractor and has entered into a section 17C agreement for the provision of primary medical services; or
  - (iii) an individual who is a GMS practice, section 17C agreement provider or an HBPMS contractor,the Health Board with which that partnership, company, practice, provider or contractor has entered into a contract or agreement referred to in those provisions;
- (b) in the case of a principal practitioner, the Health Board on whose medical performers list his or her name appears; and
- (c) in the case of an assistant practitioner or locum practitioner, the Health Board engaging the practitioner under a contract of services or for services and on whose medical performers list his or her name appears;

“contracting-out requirements” means the requirements mentioned in section 9(2) (requirements for certification of schemes)(**14**) of the 1993 Act;

“the contribution option period” has the meaning given in regulation 2.C.8(8) (member option to purchase additional pension);

“corresponding health service scheme” has the meaning given in regulation 2.F.11(7) (calculation of transferred-in pensionable service);

“deferred member” has the meaning given in section 124(1)(**15**) (interpretation of Part I) of the 1995 Act and except where the context requires otherwise, refers to membership of the scheme (but see paragraph (3) and regulation 2.D.5(9) (partial retirement (member aged at least 55)));

“dental list” means a list prepared in accordance with regulations made under section 25(2)(a) (arrangements for provision of general dental services) of the 1978 Act;

“dentist” means a registered dental practitioner;

“dependent child” is to be construed in accordance with regulation 2.E.9 (meaning of “dependent child”);

“dispensing services” means the provision of drugs, medicines and such appliances which are included in the list prepared by Scottish Ministers under section 27(1) (arrangements for provision of pharmaceutical services)(**16**) of the 1978 Act;

“employing authority” means–

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(14) There are amendments to section 9 not relevant to these Regulations.

(15) There are amendments to section 124 not relevant to these Regulations.

(16) Section 27(1) was amended by the National Health Service and Community Care Act 1990 (c. 19), section 66 and Schedule 9, paragraph 19.

- (a) a Health Board, Special Health Board or NHS National Services Scotland (established under sections 2(17) and 10(18) of the 1978 Act);
- (b) the Mental Welfare Commission for Scotland established under section 4 (the Mental Welfare Commission for Scotland) of the Mental Health (Care and Treatment) (Scotland) Act 2003(19);
- (c) an OOH provider;
- (d) an HBPMS contractor;
- (e) a GMS practice;
- (f) a section 17C agreement provider;
- (g) any other body constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of the scheme; or
- (h) in relation to a person who is subject to a direction made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(20) and subject to such modifications to these Regulations as the Scottish Ministers may in any particular case direct, any employer of such a person whom the Scottish Ministers agree to treat as an employing authority for the purposes of these Regulations;

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

“enhanced services” with regard to—

- (a) a GMS practice, has the same meaning given in regulation 2(1) (interpretation) of the 2004 Regulations; and
- (b) any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be enhanced services within the meaning given in regulation 2(1) of the 2004 Regulations;

“essential services” means services required to be provided in accordance with regulation 15 (essential services) of the 2004 Regulations;

“GMS contract” means a contract under section 17J of the 1978 Act(21) (health boards' power to enter into general medical services contract);

“GMS practice” means—

- (a) a registered medical practitioner;
- (b) 2 or more individuals practising in partnership; or
- (c) a company limited by shares,

with whom a Health Board has entered into a GMS contract;

“GP performer” means a registered medical practitioner, other than a GP registrar or a locum practitioner, whose name is included in a medical performers list and who performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services or certification services (or a combination of those services)—

- (a) under a GMS contract, section 17C agreement or HB PMS contract;

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(17) Section 2 was amended by the National Health Service and Community Care Act 1990, sections 28, 66 and Schedules 9 and 10, the [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), schedule 2 and the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), schedule 2.

(18) Section 10 was amended by the Health Act 1999 (c. 8), section 65 and Schedule 4, the [National Health Service Reform \(Scotland\) Act 2004 \(asp 7\)](#), schedule 2, and the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), schedule 2.

(19) asp 13.

(20) 1967 c. 28. There are amendments to section 7 not relevant to these Regulations.

(21) Section 17J is prospectively inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), section 4.

- (b) on behalf of an OOH provider; or
- (c) under a contract of service or for services with a Health Board which relates to arrangements under which it provides services under section 2C of the 1978 Act (functions of Health Boards: primary medical services)(22)–

“GP registrar” means a practitioner who is being trained in medical practice by–

- (a) until the coming into force for all purposes of article 4(5)(d) (education and training to the award of a Certificate of Completion of Training) of the 2003 Order, a general medical practitioner who–
  - (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 (approval of trainers) of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998(23); and
  - (ii) performs primary medical services; and
- (b) from the coming into force for all purposes of that article, a general medical practitioner who is approved under that article for the purpose of providing training under article 5(1)(c)(i) (minimum requirements for general practice training) of the 2003 Order, whether as part of training leading to the award of CCT or otherwise”.

“GP trainer” means a registered medical practitioner who is approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of the 2003 Order for the purposes of providing training to a GP Registrar under article 5(1)(c)(i) of that Order;

“the guarantee date” has the meaning given in regulation 2.F.2(2) (applications for statement of entitlement);

“guaranteed cash equivalent transfer value payment” has the meaning given in regulation 2.F.3 (application for transfer value payments: general);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 14 (earner’s guaranteed minimum) or 17 (minimum pensions for widows and widowers) of the 1993 Act as the case may be;

“HBPMS contract” means arrangements for the provision of services in accordance with section 2C(2) of the 1978 Act between a Health Board and a HBPMS contractor;

“HBPMS contractor” means a person with whom a Health Board has made arrangements under section 2C(2) (functions of health boards: primary medical services) of the 1978 Act, but only if that person is also a person who would be eligible to enter into a GMS contract or a section 17C agreement for the provision of primary medical services and has not entered into such a GMS contract or section 17C agreement;

“the health service” has the meaning given in section 108 (interpretation and construction) of the 1978 Act(24);

“lifetime allowance”, in relation to a person, has the meaning given in section 218 of the 2004 Act(25);

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils)(26);

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(22) Section 2C was inserted by the [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#) section 1, and amended by the National Health Service Reform (Scotland) Act 2004, schedule 1, paragraph 1.

(23) S.I. 1998/5. Regulation 7 was amended by S.I. 1998/669.

(24) To which there are amendments not relevant to these Regulations.

(25) 2004 c. 12.

(26) 1994 c. 39, amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22 and S.I. 1996/186, article 2.

“locum practitioner” has the meaning given in regulation 3.A.1(1) (interpretation of Part 3: general);

“lower earnings limit” must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992(27);

“lower tier ill health pension” must be read in accordance with regulation 2.D.8 (early retirement on ill health: active members);

“lump sum rule” has the meaning given in section 166 (lump sum rule) of the 2004 Act(28);

“lump sum death benefit rule” has the meaning given in section 168 (lump sum death benefit rule) of the 2004 Act(29);

“medical performers list” means a list prepared by a Health Board pursuant to regulation 4(1) of the National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004(30);

“member”, except where the context otherwise requires, means an active member, a deferred member, a pensioner member or a pension credit member;

“NHS dental employee” means an individual who is not a practitioner and who, in connection with the provision of dental health services in the health service, is employed under a contract of service by a Health Board;

“non GP provider” in these regulations applies as if he or she were a whole time officer and means–

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that practice;
- (b) a partner in a partnership all of whose members have entered into a section 17C agreement for the provision of primary medical services–
  - (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that partnership;
- (c) a partner in a partnership that is an HBPMS contractor that has entered into an HBPMS contract for the provision of primary medical services–
  - (i) but who is not a GP provider; and
  - (ii) who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that partnership;
- (d) a shareholder in a company limited by shares that is–
  - (i) a GMS practice; or
  - (ii) a section 17C provider or an HBPMS contractor that has entered into a section 17C agreement or an HBPMS contract for the provision of primary medical services, but who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that company; and

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(27) 1992 c. 4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999, and amended by section 7(1) to (3) of the Pensions Act 2007 (c. 22).

(28) Section 166 was amended by the Finance Act 2007 (c. 11), Schedule 20, paragraph 9.

(29) Section 168 was amended by the Finance Act (c.11), Schedule 20, paragraph 9.

(30) S.S.I. 2004/114.

- (e) an individual who is a section 17C provider or an HBPMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that he or she participates in the provision of NHS services,

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

“NHS employment” means employment with an employing authority;

“the NHS superannuation scheme for Scotland 1995” means the scheme set out in the 1995 Regulations;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 (categories of pension schemes)(31) of the Pension Schemes Act 1993 which—

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Chapter 2.F (transfers); and

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

- (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988 (retirement benefits schemes) or whose application for approval under that Chapter was under consideration;

- (ii) a statutory scheme as defined in section 612(1)(32) of the Income and Corporation Taxes Act 1988 (interpretation); or

- (iii) a scheme to which section 608(33) of the Income and Corporation Tax Act 1988 applied (superannuation funds approved before 6th April 1980),

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

“officer” means a person (other than a GP performer or dentist employed by an employing authority) and includes a GP Registrar and a non GP Provider;

“OOH provider” has the meaning given in regulation 2.A.15 (out of hours providers);

“OOH services” has the meaning given in regulation 3.A.1 (interpretation of part 3: general);

“opting-out” and related expressions are to be construed in accordance with regulation 2.B.5 (opting out of the scheme);

“pay period” means—

- (a) in relation to a member who receives regular payments for his or her service under a contract for services or contract of employment means the period in respect of which each payment of salary wages or fees is made in accordance with that contract; and

- (b) in all other cases any period of 3 months ending on the last day of March, June, September or December;

“pensioner member” has the meaning given in section 124(1) (interpretation of part 1)(34) of the 1995 Act and, except where the context otherwise requires, refers to membership of the scheme (but see paragraphs (3) and (4) and regulation 2.D.5(9) (partial retirement (members aged at least 55)));

“pensionable earnings” has the meaning given in regulation 3.A.7 (meaning of “pensionable earnings”) (read with regulation 3.A.8 (pensionable earnings: breaks in service));

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(31) Section 1 was amended by S.I. 2007/3014, regulation 2(b).

(32) Section 612 was repealed by the 2004 Act Schedule 42, paragraph 1.

(33) Section 608 was repealed by the 2004 Act, Schedule 42, paragraph 1.

(34) To which there are amendments not relevant to these Regulations.



“pensionable employment” means employment as an officer which is pensionable under this part;

“pensionable pay” has the meaning given in regulation 2.A.8 (meaning of “pensionable pay”) (read with regulation 2.A.9 (pensionable pay: breaks in service));

“pensionable service” has the meaning given by regulations 2.A.2 (meaning of “pensionable service”) and 2.A.3 (meaning of “pensionable service”: part-time service) (read with regulation 2.A.4 (pensionable service: breaks in service));

“pension credit” means a credit under section 29(1)(b) (creation of pension debits and credits) of the 1999 Act and includes a credit under corresponding Northern Ireland legislation;

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

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

“pension credit rights” has the meaning given by section 101B (interpretation)(35) of the 1993 Act;

“pension sharing order or provision” means such an order or provision as is mentioned in section 28(1)(36) (activation of pension sharing) of the 1999 Act;

“personal pension scheme” means a personal pension scheme which—

- (a) in the case of such a scheme established on, or after 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which Scottish Ministers agree to recognise as a transferring scheme for the purposes of Chapter 2.F; and
- (b) in the case of such a scheme established before that date, was—
  - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes); and
  - (ii) on 6th April 2006 became a registered pension scheme for the purpose of the 2004 Act;

“practice staff” means a person (other than an assistant practitioner, principal practitioner, GP registrar or non GP provider) employed by a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider to assist in the provision of the services they provide;

“practitioner” means—

- (a) a registered medical practitioner, other than a GP registrar, who is a locum practitioner, a GP provider or a GP performer; or
- (b) a registered dentist,

but excludes a person who is paid wholly by way of salary by a Health Board;

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

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

“qualifying service” has the meaning given in regulation 2.A.5 (meaning of “qualifying service”) (read with regulation 2.A.6 (qualifying service: disregard of breaks in service));

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

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(35) To which there are amendments not relevant to these Regulations.

(36) Section 28 was amended by the Civil Partnership Act 2004 (c. 33), Schedule 27, paragraph 159.



“reckonable pay” has the meaning given in regulation 2.A.10 (meaning of “reckonable pay”: general) (read with 2.A.11 (adjustments for inflation in determining reckonable pay under regulation 2.A.10) to 2.A.14 (meaning of “reckonable pay”: concurrent part time employments));

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

“retail prices index” has the meaning given in section 989 (the definitions) of the Income Tax Act 2007(37);

“safeguarded percentage” has the meaning given by section 68A(3) (safeguarded rights) of the 1993 Act(38);

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

“salaried dentist” means a dentist employed by a Health Board who undertakes to provide general dental services at a health centre, hospital or from any vehicle or moveable facility;

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

“the scheme actuary” means the actuary appointed by the Scottish Ministers for the time being to provide a consulting service on actuarial matters relevant to these Regulations;

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

“section 17C agreement” means an agreement made under section 17C(39) of the 1978 Act;

“section 17C agreement provider” means any person or body who is providing primary medical services in accordance with a section 17C agreement;

“State pension age” means pensionable age, as defined in section 181(1) (general interpretation)(40) of the 1993 Act;

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

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

“trade dispute” has the meaning given in section 35(1) (interpretation) of the Jobseekers Act 1995(41);

“upper tier ill health pension” must be read in accordance with regulation 2.D.8 (early retirement on ill health: active members); and

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

(2) In determining whether a person who is an active member or a pensioner member of the scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person’s rights as such are to be disregarded.

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

(4) For the purposes of this Part–

(a) an employment that is comparable to a part-time employment that is not held concurrently by a person with any other such employment is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Scottish Ministers amounts to whole-time employment in the case of an employment for services of the kind performed in the part-time employment; and

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(37) 2007 c. 3.

(38) Section 68A was inserted by the 1999 Act. There have been amendments not relevant to these Regulations.

(39) Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c. 46), section 21(2).

(40) To which there are amendments not relevant to these Regulations.

(41) 1995 c. 18. There are amendments to section 35 not relevant to these Regulations.

- (b) an employment that is comparable to 2 or more part-time employments that are held concurrently by a person is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Scottish Ministers amounts to whole-time employment in the case of an employment for services of the kind performed in the 2 or more part time employments.

*Pensionable service*

**Meaning of “pensionable service”**

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

- (a) any period of service in respect of which the member contributes to the scheme under regulation 2.C.1 (contributions by members);
- (b) any period of absence from service which counts as pensionable service under regulation 2.A.4; and
- (c) any period of service credited to the member as pensionable service under Chapter 2.F (transfers).

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

- (a) any period of service in respect of which the Scottish Ministers have paid contributions to another occupational pension scheme in respect of the member;
- (b) in the case of a pensioner member or deferred member, any period taken into account—
  - (i) in determining the member’s entitlement to the pension in payment or, as the case may be, the deferred pension; or
  - (ii) in calculating the amount of that pension,

but, in the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement (members aged at least 55)) subject to paragraph (6);

- (c) any period of service in respect of which the Scottish Ministers' liability to provide benefits is discharged—
  - (i) by the payment of a contributions equivalent premium under section 55(2) (payment of state scheme premiums on termination of certified status) of the 1993 Act;
  - (ii) under regulation 2.C.18 (repayment of contributions); or
  - (iii) by the payment of a transfer value payment on transfer out under Chapter 2.F (transfers); or
- (d) any period of service which would result in the aggregate mentioned in paragraph (1) exceeding 45 years.

(3) A member’s pensionable service must not exceed 45 years unless—

- (a) the member gives notice in writing to the Scottish Ministers and the member’s employing authority of an intention to remain in pensionable service beyond 45 years; and
- (b) that notice is received by the Scottish Ministers and the member’s employing authority—
  - (i) not earlier than 3 months before the member reaches 45 years pensionable service; and
  - (ii) by the end of the pay period during which the member reaches the 45 year limit.

(4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years—

- (a) benefits under this Part shall be calculated by reference to a maximum of 45 years of pensionable service; and
  - (b) the Scottish Ministers must select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.
- (5) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purpose of this Part—
- (a) the member’s pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made; and
  - (b) the payment is treated as the member’s pensionable pay for that period.
- (6) In the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement (members aged at least 55)), paragraph (2)(b) only applies to so much of the member’s pensionable service as is mentioned in regulation 2.D.5(6)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).
- (7) Regulation 2.A.3 makes further provision where service is in part-time employment.

**Meaning of “pensionable service”: part-time service**

- 2.A.3.—**(1) Subject to paragraphs (2) to (6) the number of days of a member’s pensionable service in part-time employment for a period is calculated by multiplying the total hours of employment during the period by 7, and dividing by the number of hours of employment per week for a comparable whole-time employment.
- (2) If the part-time employment is for a specified number of sessions per week, subject to paragraphs (3) to (6)—
- (a) paragraph (1) does not apply; and
  - (b) the number of days of the member’s pensionable service in the part-time employment for the period is calculated by multiplying the number of sessions of employment during the period by 7, and dividing by the number of sessions per week of the length of the specified sessions for a comparable whole-time employment.
- (3) If during the period for which a part-time employment is held there is an alteration—
- (a) in the case of an employment to which paragraph (1) applies, in the number of hours of employment per week for a comparable whole-time employment; or
  - (b) in the case of an employment to which paragraph (2) applies, in the number of specified sessions per week or the length of those sessions for a comparable whole time employment,
- separate calculations must be made under paragraph (1) or, as the case may be, paragraph (2) for the periods before and after the alteration.
- (4) If, apart from this paragraph, a member’s pensionable service in respect of the part time employments held for a period, calculated in accordance with paragraph (1) or (2), would exceed that period, the excess is ignored.
- (5) Paragraphs (1) and (2) do not apply for the purposes of regulation 2.A.2(3) (meaning of “pensionable service”), and for those purposes part-time employments held concurrently are treated as a single employment.
- (6) Temporary additional sessions are ignored in calculating a member’s pensionable service in a part time employment.

**Pensionable service: breaks in service**

- 2.A.4.—**(1) Paragraph (2) applies if a member is absent from work because of—

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

(2) The period of absence counts as pensionable service if the member contributes to the scheme under regulation 2.C.1 (contributions by members) in respect of the period of absence.

(3) If–

- (a) a member is on leave of absence for a period not exceeding 6 months but does not fall within paragraph (1)(a) to (e); and
- (b) the member contributes to the scheme under regulation 2.C.1 by contributions made at the same intervals as those made by the member before the absence,

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

(4) This paragraph applies if a person–

- (a) ceased to be an active member because of–
  - (i) ceasing to be employed in an employment in which the person is eligible to be such a member; or
  - (ii) exercising the option under regulation 2.B.5 (opting out of the scheme); and
- (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.

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

(6) This paragraph applies if–

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

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

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

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

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

(9) Where paragraph (5) applies in respect of the service in which the person was an active member and becomes an active member again, see Chapter 2.G (re-employment and rejoining the scheme).

### *Qualifying service*

#### **Meaning of “qualifying service”**

**2.A.5.—**(1) In this Part, references to a member’s qualifying service, are references to the aggregate of the following periods—

- (a) the member’s pensionable service under this Part other than such pensionable service as is referred to in regulation 2.A.2(1)(c) (transferred-in service);
- (b) in the case of a person in respect of whom a transfer value in respect of his or her rights under another pension arrangement has been accepted under Chapter 2.F (transfers), a period equal to the person’s period as an active member in any occupational pension scheme in respect of which the rights accrued;
- (c) in the case of a person who—
  - (i) became an active member on the transfer of the person’s employment to a new employer as the result of a transfer of an undertaking to that employer; and
  - (ii) has rights under another occupational pension scheme to which the person was eligible to belong in the person’s employment with the former employer, in respect of which no transfer payment has been accepted under regulation 2.F.10 (acceptance of transfer value payments),

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

- (d) any period treated as qualifying service under paragraph (3), (5) or (6) or under regulation 2.A.6; and
  - (e) where the member ceased to be an active member under Part 3 less than 12 months before becoming a member under this Part, any period of qualifying service under Part 3.
- (2) Paragraph (3) applies if a member who is employed on a casual basis—
- (a) ceases to pay contributions because of a break in the employment in which the member is an active member of a period not exceeding 3 months; and
  - (b) re-enters employment in which the member is eligible to be an active member on the same basis after the break.
- (3) For the purposes of this Part the member—
- (a) is treated as continuing to be in qualifying service during the break; and
  - (b) as not being required to rejoin the scheme on re-entering the employment.
- (4) For the other rules applying where there is a short break in service, see regulation 2.A.6.
- (5) If—
- (a) a pension becomes payable to a member under regulation 2.D.11 (early retirement on termination of employment by employing authority) in a case where regulation 2.D.13(5) (exceptions to requirement that NHS employment must have ceased) applies; and
  - (b) the member has elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member,

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

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

**Qualifying service: disregard of breaks in service**

**2.A.6.—**(1) This regulation applies for the purpose of calculating the qualifying service of a member whose pensionable service ceases for an interval (other than in circumstances where regulation 2.A.5(2) applies).

(2) Subject to paragraph (6), if the interval—

- (a) does not exceed one month; or
- (b) is due to a trade dispute,

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

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

(4) Subject to paragraph (6) if—

- (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to the scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment; and
- (b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

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

(5) Subject to paragraph (6) if—

- (a) a person who is an active member in an employment opts to cease to be such a member whilst continuing to be employed in the employment and becomes a deferred member, but not a pensioner member, in respect of that service; and
- (b) after a period not exceeding 12 months the person becomes such an active member again in that employment,

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

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

- (a) the person has received a repayment of contributions under regulation 2.C.18 (repayment of contributions) in respect of the earlier period (but see paragraph (7)); or
- (b) the person’s rights under the scheme in respect of that period have been extinguished under regulation 2.F.7 (effect of transfer out) because a transfer value payment has been made.

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

(8) If—

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

(b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 2.A.4(5) or regulation 2.G.3(2)(a) (exception to general rule in regulation 2.G.2), the period of pensionable service in respect of which the member is a deferred member or a pensioner member is treated as qualifying service in relation to the period after the interval.

### *Calculating service*

#### **Calculation of periods of membership or service**

**2.A.7.**—(1) References in this Part to any period expressed in days are references to the period in question, ignoring 29th February, expressed in days.

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

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

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

- (a) the days referred to in paragraph (2); and
- (b) the full days referred to in paragraph (3),

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

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

- (a) the days referred to in paragraph (2); and
- (b) the full days referred to in paragraph (3),

are converted into years by dividing the number of days by 365, and using the result to 4 decimal places.

### *Pensionable pay*

#### **Meaning of “pensionable pay”**

**2.A.8.**—(1) In this Part, subject to the following provisions of this regulation, “pensionable pay” means all salary, wages, fees and other regular payments made to a person in respect of employment in which the person is an active member of the scheme.

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

- (a) in the case of a member in one such employment, as pensionable pay of that employment; and
- (b) in the case of a member in 2 or more such employments, as pensionable pay of such of those employments as the Scottish Ministers consider appropriate.

(3) “Pensionable pay” does not include—

- (a) bonuses;
- (b) payments made to cover expenses; or
- (c) payments for overtime.



## (4) If–

- (a) a person is an active member in respect of 2 or more part-time employments; and
- (b) in the opinion of the Scottish Ministers, the total pensionable pay for the employments (apart from this paragraph) exceeds the amount that would be the pensionable pay for a comparable whole time employment, not held concurrently with any other employment under which services of the kinds performed in the 2 or more part-time employments are performed,

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

(5) In the case of a non GP provider who is not in receipt of any salary, wages, fees or any other regular payment, pensionable pay means practitioner income less any sum on account of practice expenses (for these purposes, contributions payable under regulation 2.C.1(5) or (6) (contributions of members) are neither practitioner income nor practice expenses).

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

- (a) a GMS contract;
- (b) a section 17C agreement;
- (c) an HBPMS contract;
- (d) payments from, or to, a practitioner who is a GMS practice, a section 17C agreement practice or an HBPMS contractor in respect of the performance of certification services, commissioned services or collaborative services.

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

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

(9) The calculations described in paragraph (8) will be made by the Health Board or someone appointed on its behalf to which the partners are required to give notice of their election in accordance with paragraph (10).

(10) Non GP providers and any principal medical practitioners who are partners in any partnership must exercise the election described in paragraph (8) by giving notice in writing to their contracting Health Board or someone appointed on its behalf, in accordance with paragraph (11).

## (11) A notice given under this regulation–

- (a) must be signed by all the non GP providers and principal medical practitioners in the partnership and must state as a fraction each non GP provider's and practitioner's share in the partnership profits;
- (b) will take effect–
  - (i) from the date agreed between the partners and the Health Board concerned; or
  - (ii) if no agreement is reached, a date decided by the Scottish Ministers;
- (c) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the partners in the partnership; and
- (d) will be automatically cancelled upon a change in the members of the partnership.

## **Pensionable pay: breaks in service**

**2.A.9.**—(1) Paragraph (2) applies if a member is absent from work because of—

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

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

(2) For the purposes of this Part (apart from regulations 2.C.1 (contributions of members) and 2.C.2 (members' contribution rate), and subject to paragraph (3), amounts equal to the pensionable pay that the member would have received if those circumstances had not applied are treated as having been paid to the member.

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

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

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

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

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

(7) In the case of a non GP provider—

- (a) who is one of a number of non GP providers or practitioners who have elected as described in regulation 2.A.8(9), each non GP provider's or practitioner's pensionable earnings will be calculated as if the partnership's aggregate pensionable pay were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased; and
- (b) except where the non GP provider's pensionable pay falls to be calculated as described in sub paragraph (a), the non GP provider will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his or her earnings were reduced or ceased.

(8) If the earnings used to calculate a non GP provider's pensionable pay cease during a period of absence to which this regulation applies, a non GP provider falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (7)(a) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the non GP provider actually leaves pensionable employment.

(9) For the purposes of paragraph (8), the rate of contributions payable is the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (4)(a) had the non GP provider's reduced earnings excluded any earnings for a day during which the non GP provider, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.

(10) If a non GP provider fails to pay any contributions which are required to be paid to the scheme in respect of a period of absence to which this regulation applies, the non GP provider will be treated as having left pensionable employment except that no refund of contributions or other benefit is payable unless the non GP provider actually leaves pensionable employment.

(11) If a non GP provider to whom paragraph (7) applies—

- (a) leaves pensionable employment; or
- (b) by virtue of paragraph (7)(a) or (8), is treated as having left pensionable employment, without becoming entitled to a preserved pension,

then if the non GP provider later returns to pensionable employment regulation 2.A.4(4) (pensionable service: breaks in service) will apply as if the reference to 12 months was a reference to 3 years.

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

### *Reckonable pay*

#### **Meaning of “reckonable pay”: general**

**2.A.10.**—(1) This regulation applies for the purpose of determining the meaning of “reckonable pay”, in relation to—

- (a) a member whose active membership ceases; or
  - (b) a member becoming entitled to the immediate payment of a pension during the member's active membership period—
    - (i) on the exercise of the option under regulation 2.D.5 (partial retirement: members aged at least 55); or
    - (ii) under regulation 2.D.1(1)(b)(ii) (normal retirement pensions).
- (2) This regulation is subject to regulations 2.A.11 to 2.A.14.
- (3) A member's “reckonable pay” is determined by the formula—

$$IRP \times \frac{RP_a}{RP_i}$$

where—

IRP is the interim reckonable pay determined in paragraph (6) or (7), as appropriate;

RP<sub>a</sub> is the annual rate of retirement pension that the member would be entitled to if the interim reckonable pay included the adjustment for inflation described in regulation 2.A.11; and

RP<sub>i</sub> is the annual rate of retirement pension the member would be entitled to if the interim reckonable pay did not include the adjustment for inflation described in regulation 2.A.11 but instead had been increased by the amount that it would have been increased if it had been the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971.

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

- (5) In this regulation—
- (a) “the relevant day” means—
    - (i) in a case within paragraph (1)(a), the day on which the member’s active membership ceases; and
    - (ii) in a case within paragraph (1)(b), the day before that on which the member becomes entitled to the pension; and
  - (b) “the best consecutive 1095 day period” shall be determined by comparing—
    - (i) the period of 1095 days immediately preceding the relevant day (period 1);
    - (ii) the period of 1095 days which overlaps period 1 by 730 days (period 2); and
    - (iii) the period of 1095 days which overlaps period 2 by 730 days,and so on.
- (6) Except where paragraph (4) or (7) applies, in this regulation “interim reckonable pay” means one third of the member’s pensionable pay for the period of 1095 days—
- (a) that begins—
    - (i) during the member’s pensionable service; and
    - (ii) within the period of 10 years ending with the relevant day; and
  - (b) for which the member’s pensionable pay was the highest (“the best consecutive 1095 day period”).
- (7) If the member’s pensionable service within the period of 10 years ending with the relevant day—
- (a) is less than 365 days; or
  - (b) exceeds 365 days but is less than 1095 days,
- “interim reckonable pay” means the member’s pensionable pay for the period of the member’s pensionable service, divided by the number of days in that period and multiplied by 365.
- (8) Paragraph (9) applies if 2 or more periods of pensionable service are treated as a single continuous period of pensionable service under—
- (a) regulation 2.A.4(5); or
  - (b) regulation 2.G.3(2) (exception to general rule in regulation 2.G.2).
- (9) The reference in—
- (a) paragraph (4) to a period of pensionable service equalling 365 days;
  - (b) paragraph (5) to a period of 1095 days; and
  - (c) paragraph (7) to the period of pensionable service less than 365 days or more than 365 days but less than 1095 days,
- are references to periods together amounting to periods of that length, disregarding any breaks during the single period.
- (10) Paragraph (8) does not apply if the other employment is an employment in respect of which the member continues to accrue benefits in accordance with regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) despite being entitled to a pension under regulation 2.D.11 (early retirement on termination of employment by employing authority).
- (11) If—
- (a) a person’s reckonable pay in respect of an employment that the person has left falls to be determined under this regulation by reference to the person’s pensionable pay for any period in respect of an employment; and

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

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

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

**2.A.11.**—(1) In determining—

- (a) the pensionable pay for the period of pensionable service referred to in regulation 2.A.10(4);
- (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 2.A.10(6); or
- (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 2.A.10(7),

the amount of pensionable pay is adjusted for inflation.

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

(3) In this regulation—

- (a) “specified period” means any single scheme year falling in the period, or periods, referred to in regulation 2.A.10(4), (6) or (7); and
- (b) “the relevant day” has the meaning given in regulation 2.A.10(5).

### **Restriction on pensionable pay used for calculating benefits in respect of capped transferred in service**

**2.A.12.**—(1) This regulation applies for determining the amount of a member's pensionable pay for the purposes of calculating so much of any benefit under the scheme as falls to be calculated by reference to capped transferred in service.

(2) If a member's pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any calculation mentioned in paragraph (1).

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

- (a) in relation to the tax year 2008–09, £117,600; and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).

(4) If the retail prices index for the month of September preceding the tax year 2009 10 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at in the following way—

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

(5) If the retail prices index for the month of September preceding the tax year 2009 10 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.

(6) In this regulation—

- (a) “capped transferred-in service” has the meaning given by regulation 2.F.12 (meaning of capped transferred-in service); and
- (b) “pensionable pay” has the meaning given by regulation 2.A.8.

**Meaning of “reckonable pay”: non-concurrent part-time employment**

**2.A.13.**—(1) This regulation applies if a member’s reckonable pay falls to be determined under regulation 2.A.10 by reference to the member’s pensionable pay for any period for a part time employment that was not held concurrently with any other such employment in which the member was an active member.

(2) Subject to paragraph (4), the member’s reckonable pay for that period in respect of the part time employment is the amount that would have been paid in respect of that employment for that period if it had been a whole time employment not held concurrently with any other employment.

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

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

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

**Meaning of “reckonable pay”: concurrent part-time employments**

**2.A.14.**—(1) This regulation applies if under regulation 2.A.10(11) a member’s reckonable pay falls to be determined by reference to the member’s pensionable pay for any period for 2 or more part time employments held concurrently during that period.

(2) The member’s reckonable pay for that period is calculated as follows—

Step 1—

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

Step 2—

find the appropriate fraction for each of the employments (see paragraph (3)); and

Step 3—

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

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

$$\frac{HPW}{THPW}$$

where—

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

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

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

$$\frac{SPW}{TSPW}$$

where—

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

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

(5) If—

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

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

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

### **Out of hours providers**

**2.A.15.**—(1) For the purposes of these Regulations, an “OOH provider” is—

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

(i) in which all the members of the company are registered medical practitioners, HBPMS contractors, GMS practices or section 17C agreement providers and the majority of those members are—

(aa) HBPMS contractors, GMS practices or section 17C agreement providers whose HBPMS contracts, GMS contracts or section 17C agreements require them to provide OOH services; or

(bb) registered medical practitioners who are partners or shareholders in a HBPMS contractor, a GMS practice or section 17C agreement provider which is a partnership or a company limited by shares and which is required to provide OOH services under its HBPMS contract, GMS contract or section 17C agreement;

(ii) which has a contract with a Health Board, an HBPMS contractor, a GMS practice or a section 17C agreement provider for the provision of OOH services; or

(iii) in respect of which a Health Board appointed by the Scottish Ministers to act on their behalf—

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

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

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

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

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

(ii) operates on a not for profit basis;

(iii) is not an associated company in relation to another person;

(iv) has memorandum or articles or rules which—



- (aa) prohibit the payment of dividends to its members;
  - (bb) require its profits (if any) or other income to be applied in promoting its objects; and
  - (cc) require all assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not for profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto;
- (v) has at least one member who is–
- (aa) an HBPMS contractor, GMS practice or a section 17C agreement provider;
  - (bb) a partner in a partnership which is an HBPMS contractor, GMS practice or a section 17C agreement provider; or
  - (cc) a shareholder in a company limited by shares that is a HBPMS contractor, GMS practice or a section 17C agreement provider;
- (vi) has a contract with a Health Board, an HBPMS contractor, GMS practice or section 17C agreement provider, for the provision of OOH services; and
- (vii) is approved as an employing authority by a Health Board appointed by the Scottish Ministers to act on their behalf–
- (aa) pursuant to a written application made by the body to it for that purpose; and
  - (bb) that Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.

(2) For the purposes of paragraph (1)(b)(iii), a body corporate is to be treated as another person’s “associated company” if that person has control of it, except where that person is an employing authority, and for these purposes a person shall be taken to have control of a body corporate if they exercise, or are able to exercise, or are entitled to acquire direct or indirect control over its affairs.

(3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Health Board appointed by the Scottish Ministers to act on their behalf (“the appointed Board”).

(4) An application referred to in paragraph (3) may specify a date from which approval by the appointed Board (if given) has effect (“the nominated date”).

- (5) Where a company limited by guarantee or other body corporate makes an application and–
- (a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the date on which approval is actually given (“the approval date”); and
  - (b) it approves that application,

that approval takes effect on the later of the nominated date and approval date.

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

- (7) For the purposes of this regulation–
- (a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be; and
  - (b) the nominated date cannot be earlier than 1st April 2004.

(8) The appointed Board may give an OOH provider a notice in writing terminating its participation in the scheme where that provider–

- (a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation 3.C.4(2) (guarantees, indemnities and bonds);
- (b) has ceased to satisfy the conditions for approval; or
- (c) has notified or has an obligation to notify the Board that any one of the following events has occurred in respect of it–
  - (i) a proposal for a voluntary arrangement has been made or approved under Part 1 (company voluntary arrangements) of the Insolvency Act 1986<sup>(42)</sup> (“the 1986 Act”);
  - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act;
  - (iii) a receiver, manager or administrative receiver has been appointed under Part III (receivership) of the 1986 Act;
  - (iv) a winding up petition has been presented, a winding up order has been made or a resolution for voluntary winding up has been passed under Part IV (winding up of companies registered under the Companies Acts) or Part V of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 of the Industrial and Provident Societies Act 1965<sup>(43)</sup>; or
  - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part XX (winding up of companies registered under this Act or the former Companies Acts) of the Companies Act 1985<sup>(44)</sup>.
- (9) An OOH provider–
  - (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event; and
  - (b) that wishes to cease to participate in the scheme must give the appointed Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.
- (10) An OOH provider ceases to participate in the scheme on–
  - (a) such date as the appointed Board may specify in notice under paragraph (8); or
  - (b) the day upon which the period referred to in paragraph (9)(b) expires where a notice under that paragraph has been given.

## CHAPTER 2.B

### MEMBERSHIP

#### **Eligibility: general**

**2.B.1.**—(1) A person is eligible to be an active member of the scheme if conditions A to C are met and the person is not prevented by regulation 2.B.2, 2.B.3 or 2.B.6.

- (2) Condition A is that the person is in NHS employment.
- (3) Condition B is that the person–
  - (a) enters NHS employment on or after 1st April 2008; or

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<sup>(42)</sup> 1986 c. 45.

<sup>(43)</sup> 1965 c. 12, section 58 was amended by S.I. 2000/3649, article 180.

<sup>(44)</sup> 1985 c. 6.

- (b) entered NHS employment before that date and on that date was not an active member of the NHS superannuation scheme for Scotland 1995 in that employment or any other NHS employment,
- and meets any one of the “other scheme conditions”.
- (4) Condition C is that the person has not reached the age of 75.
- (5) The “other scheme conditions” are that–
- (a) the person has not previously been an active member of the NHS superannuation scheme for Scotland 1995;
  - (b) the person ceased to be an active member of the NHS superannuation scheme for Scotland 1995 at least 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that scheme;
  - (c) the person ceased to be an active member of the NHS superannuation scheme for Scotland 1995 less than 12 months before entering the employment mentioned in paragraph 3(a) or (b) without becoming a pensioner member or a deferred member of that scheme and has received a repayment of contributions in respect of that membership; or
  - (d) the person ceased to be an active member of the NHS superannuation scheme for Scotland 1995 on or after 1st April 2008 on leaving NHS employment and before the person re-entered such employment–
    - (i) a transfer payment was made in respect of the person under Part M of the 1995 regulations, or
    - (ii) the person made an application under regulation M2 of the 1995 Regulations (exercising a right to transfer or buy-out) from which the person may not withdraw, but sub paragraph (d) will not apply if the Scottish Ministers have permitted such a person to rejoin the NHS superannuation scheme for Scotland 1995 in the circumstances described in regulation B5 of the 1995 Regulations<sup>(45)</sup>.
- (6) This regulation applies to any person who has previously been an active member of a corresponding health service scheme as though in paragraph (3) any reference to–
- (a) “NHS superannuation scheme for Scotland 1995” includes a reference to that corresponding health service scheme; and
  - (b) “NHS employment” includes a reference to–
    - (i) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(46)</sup>;
    - (ii) employment to which regulations made under section 10 of the Superannuation Act 1972<sup>(47)</sup> and having effect in England and Wales apply;
    - (iii) employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply;
    - (iv) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald)<sup>(48)</sup> applies; and
    - (v) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act.

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<sup>(45)</sup> Regulation 5 was amended by [S.S.I. 2005/512](#).

<sup>(46)</sup> 1967 c. 28.

<sup>(47)</sup> 1972 c. 11.

<sup>(48)</sup> 1984 c. 8 (Tynwald).

### **Restrictions on eligibility: general**

**2.B.2.**—(1) A person who is entitled to the immediate payment of a pension under the scheme under a regulation that requires the person not to be in NHS employment may only be an active member in accordance with—

- (a) regulation 2.D.5 (partial retirement (members aged at least 55));
- (b) regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased); or
- (c) Chapter 2.G (re-employment and rejoining the scheme).

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

- (a) became a pensioner member of the NHS superannuation scheme for Scotland 1995 before 1st April 2008; or
- (b) became a pensioner member or a deferred member of that scheme on or after that date.

(3) A person is not eligible to be an active member of the scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972<sup>(49)</sup> in respect of service in that employment.

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

(5) A person is not eligible to be an active member of the scheme if the person—

- (a) becomes entitled to an upper tier ill health pension under regulation 2.D.8 (early retirement on ill health (active members); and
- (b) opts to exchange that pension for a lump sum in accordance with regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum).

### **Concurrent employments**

**2.B.3.**—(1) This regulation applies if for any period a person holds 2 or more employments in respect of which the person is (or apart from this regulation would be) eligible to be an active member of the scheme.

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

(3) If the person is such a member in respect of 2 or more employments which, in the opinion of the Scottish Ministers, when taken together exceed a comparable whole-time employment not held concurrently with any other employment, the person is not eligible to be an active member in respect of any employment (or part of an employment) which exceeds a comparable whole time employment not held concurrently with any other employment.

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

(5) For the purposes of this regulation an employment is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Scottish Ministers amounts to whole-time employment in the case of an employment for services of the kind performed in the 2 or more employments.

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<sup>(49)</sup> 1972 c. 11.

(6) A person may participate in the scheme in respect of employment as an officer even if he or she also participates in the scheme under Part 3 in respect of concurrent employment as a practitioner.

### *Joining and leaving the scheme*

#### **Joining the scheme**

**2.B.4.**—(1) A person entering employment with an employing authority in which the person is eligible to be an active member of the scheme becomes such a member, unless regulation 2.B.5(4) applies.

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

(3) A person who whilst an active member in any employment has exercised the option to opt out of the scheme under regulation 2.B.5(1) and is eligible to be an active member—

- (a) in that employment; or
- (b) in a later employment to which paragraph (1) does not apply because of regulation 2.B.5(5),

may opt to become an active member in the employment in which the member is eligible to be such a member by giving notice in writing to the employing authority in such form as the Scottish Ministers require.

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

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

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

(6) Paragraph (1) is subject to regulation 2.B.5(5).

#### **Opting out of the scheme**

**2.B.5.**—(1) A person who is an active member of the scheme in any employment may opt at any time to cease to be such a member by giving notice in writing to the person's employing authority.

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

(3) The notice takes effect—

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

(4) A person falling within regulation 2.B.4(1) in respect of an employment (automatic membership on entering employment) who gives notice in writing under paragraph (1) before the end of the person's first pay period in the employment is treated as not having become an active member by virtue of that regulation.

(5) Regulation 2.B.4(1) does not apply to a person entering an employment with an employing authority ("the later employment") if—

- (a) the person has previously given notice under paragraph (1) in respect of an employment with the same authority that has ceased ("the earlier employment"); and
- (b) either—

- (i) the period beginning with the day following that on which the earlier employment ceased and ending with the day before the later employment begins; or
  - (ii) the period beginning with the day following that on which a relevant intermediate employment ceased and ending with the day before the later employment begins, is less than 12 months.
- (6) An employment is a relevant intermediate employment for the purposes of paragraph (5) if—
- (a) regulation 2.B.4(1) did not apply to the person on entering it because of paragraph (5); and
  - (b) the person did not opt to become a member of the scheme in that employment under regulation 2.B.4(3).

### **Restriction on further participation in the scheme**

**2.B.6.**—(1) A person who ceases to meet any of the conditions in regulation 2.B.1 in an employment or is prevented by regulation 2.B.2 or 2.B.3 from continuing to be an active member in an employment must cease to be an active member of the scheme in that employment.

- (2) Accordingly—
- (a) a person falling within paragraph (1) may not make any further contributions to the scheme under Chapter 2.C; and
  - (b) any further service of the person is not pensionable service for the purposes of the scheme.

## CHAPTER 2.C CONTRIBUTIONS

### *Basic contributions by members*

#### **Contributions by members**

**2.C.1.**—(1) Each active member must make contributions to the scheme in respect of the member’s pensionable pay in accordance with regulation 2.C.2—

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

(2) The member’s employing authority in respect of the employment must deduct the member’s contributions from the member’s earnings for the period and pay them to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid.

(3) A non GP provider must pay C1 contributions to the contracting Health Board or someone appointed on the Board’s behalf.

(4) If a non GP provider is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in any employing authority that is not an OOH provider, that authority must—

- (a) deduct C1 contributions from any pensionable pay it pays that person; and
- (b) if it is not also the contracting Health Board, pay those contributions to that Health Board, or someone appointed on its behalf.

(5) Subject to paragraph (6), if a non GP provider is—

- (a) an employing authority which is a GMS provider, a section 17C agreement practice or an HBPMs contractor; or

(b) a shareholder or partner in such an employing authority,  
that employing authority must pay C5 contributions to the contracting Health Board or person appointed on its behalf.

(6) If a non GP provider is a shareholder or partner in more than one employing authority referred to in paragraph (5), each employing authority must pay C5 contributions on any pensionable pay 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 contracting Health Board or person appointed on its behalf.

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

- (a) is not the contracting Health Board, that authority must pay C5 contributions to the contracting Health Board or person appointed on its behalf; or
- (b) is the contracting Health Board, that Health Board or someone appointed on its behalf must pay C5 contributions to the Scottish Ministers in respect of any pensionable pay it pays to the non GP provider.

(8) Contributions which are required to be paid to the contracting Health Board or someone appointed on its behalf, in accordance with this regulation must be paid to that Health Board or someone appointed on its behalf not later than the 7th day of the month following the month in which the earnings were paid.

(9) It is a function of the contracting Health Board or someone appointed on its behalf to pay the contributions—

- (a) paid to it by a non GP provider;
- (b) paid to it by another employing authority; and
- (c) it is liable to pay by virtue of paragraph (7)(b),

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

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

- (a) a non GP provider has failed to pay contributions; or
- (b) an employing authority has failed to deduct such contributions, in accordance with this paragraph, the Scottish Ministers may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member entitled to them if—
  - (i) the member agrees to such a deduction; and
  - (ii) the deduction is to the member's advantage.

(11) For the purposes of this regulation—

- (a) "C1 contributions" means contributions payable under regulation 2.C.1 by a non GP provider under the scheme; and
- (b) "C5 contributions" means contributions payable under regulation 2.C.5 by an employing authority in respect of a non GP provider.

(12) If any employing authority fails to deduct contributions payable by a member in respect of an employment from the member's earnings and the member agrees, the Scottish Ministers may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member.

(13) Paragraph (12) does not affect any other right of recovery the Scottish Ministers may have.



(14) A member who is absent from service in circumstances falling within regulation 2.A.4(1) to (3) (pensionable service: breaks in service) may make contributions to the scheme in respect of the member's pensionable pay in accordance with those regulations and regulation 2.C.2.

### Members' contribution rate

**2.C.2.—**(1) Contributions under regulation 2.C.1(1) must be paid at the member's contribution rate for the period in question.

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

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

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

- (4) Before making a determination under paragraph (3), the Scottish Ministers must consider—
- the advice of the scheme actuary; and
  - in accordance with regulation 1.B.2 (cost sharing), advice from such employee and employer representatives as the Scottish Ministers consider appropriate.

### Employees

**2.C.3.—**(1) If, at any time during the 2008–2009 scheme year and having no earlier officer service or practitioner service, a member commences pensionable employment under this Part—

- (a) that member's pensionable pay is calculated according to the formula—

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

where—

EPP is the amount of pensionable pay that the member's employing authority estimates will be payable to the member in respect of that employment during the 2008–2009 scheme year if that member is in employment on a whole time basis; and

NDPE is the number of days of pensionable employment from the date employment commences to the end of the 2008–2009 scheme year; and

- (b) contributions payable for the 2008–2009 scheme year are those specified in column 2 of the table in regulation 2.C.2 (2) in respect of the amount of pensionable pay referred to in column 1 of that table corresponding to the member's estimated pensionable pay for the 2008–2009 scheme year calculated in accordance with this paragraph.

(2) If a member holds 2 or more pensionable employments under this Part at the same time, each of those employments shall be treated separately for the purposes of calculating and paying contributions.

- (3) If a member who is in employment under this Part (“the earlier employment”)–
- (a) commences a further employment (“the later employment”) at any time during the 2008–2009 scheme year; and
  - (b) that later employment is held concurrently with the earlier employment,

the member must pay contributions in respect of the later employment at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table corresponding to the member’s estimated pensionable pay for the 2008–2009 scheme year calculated in accordance with paragraph (1).

- (4) If a member–
- (a) at any time during the 2008–2009 scheme year, ceases pensionable employment (“the earlier employment”) that is not held concurrently with another pensionable employment; and
  - (b) after so ceasing, the member next commences a further employment (“the later employment”) that is not held concurrently with another employment,

the member must continue to pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment.

- (5) If–
- (a) a member at any time during the 2008–2009 scheme year, ceases to be in 2 or more employments that were at one time held concurrently with each other (“the earlier employments”);
  - (b) those earlier employments did not all cease on the same day; and
  - (c) that member next commences a further employment (“the later employment”),

the member must continue to pay contributions in respect of the later employment at the same rate as that which applied to whichever of the earlier employments was the last to cease.

- (6) If–
- (a) a member at any time during the 2008–2009 scheme year, ceases to be in 2 or more employments that were at one time held concurrently with each other (“the earlier employments”);
  - (b) the last 2 or more of those earlier employments ceased on the same day; and
  - (c) that member next commences a further employment (“the later employment”),

the member must pay contributions in respect of the later employment at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable earnings referred to in column 1 of that table corresponding to the member’s pensionable pay for the 2008–2009 scheme year calculated in accordance with paragraph (1).

- (7) If a member–
- (a) commences pensionable employment under this Part at any time during the 2008–2009 scheme year (“the later employment”);
  - (b) has previous service under Part 3 (benefit for practitioners, non GP providers etc.) during that scheme year in respect of which he or she was liable to pay contributions to the scheme under that Part and that service was as a practitioner and all the previous practitioner service ceased prior to the commencement of the later service,

that member must pay contributions in respect of the later employment at the rate determined under Part 3 for that earlier service that ceased immediately prior to the commencement of the later employment.

- (8) If–

- (a) a member commences pensionable employment under this Part of these regulations (“the later service”) at any time during the 2008–2009 scheme year;
- (b) that member has previous service under Part 3 during that scheme year in respect of which he or she was liable to pay contributions to the scheme under that Part and that service was both as a practitioner and as a dentist; and
- (c) all such practitioner service had ceased on the same day and prior to the commencement of the later employment,

the member must pay contributions in respect of the later employment at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table corresponding to the member’s pensionable pay for 2008–2009 scheme year calculated in accordance with paragraph (1).

(9) If, in respect of a member, none of the foregoing paragraphs apply, for the purpose of determining a member’s relevant contribution rate, the Scottish Ministers must determine the amount of the member’s pensionable pay to be attributed to the 2008–2009 scheme year and, in doing so, must (in addition to the matters referred to in paragraph 2.C.2(4)) have regard to that pensionable pay attributable to pensionable employment comparable to the member’s pensionable employment, prevailing pay scales and prevailing rates of pensionable allowances.

(10) If a non-GP provider commences service for the first time (having no earlier service under Parts 2 or 3) at any time during the 2008–2009 scheme year–

- (a) that non-GP Provider’s pensionable pay in respect of that scheme year is the amount agreed between the contracting Health Board or someone appointed on its behalf on the one hand and the provider on the other hand as representing their estimate of the provider’s pensionable pay from all provider sources for that year; and
- (b) contributions payable for that part year are those specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to those estimated earnings.

(11) If a non-GP provider–

- (a) commences further NHS employment (“the later employment”) at any time during the 2008–2009 scheme year;
- (b) at the time of commencing that later employment–
  - (i) has other NHS employment as a non-GP provider in respect of which he or she is liable to pay contributions in accordance with paragraph (10); or
  - (ii) had previously been, but no longer is, in other service in respect of which he or she was liable to pay contributions in accordance with paragraph (10), (“the earlier service”); and
- (c) regardless of whether or not the non-GP provider also is, or previously also was, in NHS employment under Part 2 during the 2008–2009 scheme year,

the non-GP provider must continue to pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment.

(12) If paragraph (11) applies and the non-GP provider had two or more earlier NHS employments, that non-GP provider must continue to pay contributions in respect of the later employment–

- (a) at the same rate as that which applied to whichever of the earlier employments was the last to cease; or
- (b) if all of those earlier NHS employments, or the last 2 or more of them, ceased on the same day, in accordance with paragraph (10).

(13) In any case where paragraph (1) applies and it is apparent at the time when the person becomes an active member in an employment under this Part that the member's pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority consider appropriate for the 2008–09 scheme year and, in the case of a member who works part-time, is the variable amount that would be paid in respect of a comparable whole time employment.

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

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

(15) If, apart from this paragraph, the pensionable pay determined for a scheme year in respect of a member's employment would not be a whole number of pounds, it must be rounded down to the nearest whole pound.

### **Part-time employees**

**2.C.4.**—(1) The pensionable pay for the 2008–2009 scheme year in respect of a member's part time employment is such amount as would, in the opinion of the Scottish Ministers, be the pensionable pay for a comparable whole-time employment under which services of the kinds performed in the part time employment were performed on the assumption in paragraph (2).

(2) In forming that opinion, the Scottish Ministers must assume that the pensionable pay for the part time employment is the part-time amount.

(3) In paragraph (2) “the part-time amount” means the amount that would be the pensionable pay for the part-time employment if it were determined in the same way as the pensionable pay for a whole time employment is determined under regulation 2.C.3.

(4) If, apart from this paragraph, the pensionable pay for a scheme year in respect of a member's part time employment would not be a whole number of pounds, it must be rounded down to the nearest whole pound.

### *Contributions by employing authorities*

#### **Contributions by employing authorities: general**

**2.C.5.**—(1) Each employing authority must contribute to the scheme, in respect of each person who is an active member of the scheme in an employment with the authority, at such a rate as the Scottish Ministers specify from time to time.

(2) In specifying such a rate, the Scottish Ministers must take account of the cost of providing for any increase in pensions under the scheme as a result of orders made under the Pensions (Increase) Act 1971<sup>(50)</sup> and section 59 of the Social Security Pensions Act 1975<sup>(51)</sup>.

(3) Any contributions payable under this regulation must be paid to the Scottish Ministers on the same day as the member's contributions under regulation 2.C.1.

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

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<sup>(50)</sup> 1971 c. 56.

<sup>(51)</sup> 1975 c. 60. Section 59 was amended by sections 1 and 7 of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), Schedule 2 to the Social Security (Consequential Provisions) Act 1992 (c. 6) and Schedule 8 to the 1993 Act.

(5) The rate for the period commencing on 1st April 2008 and ending on 31st March 2009 is 14 per cent.

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

**2.C.6.**—(1) If a pension becomes payable to a member under regulation 2.D.11 (early retirement on termination of employment by employing authority), the employing authority must make a contribution to the Scottish Ministers in respect of—

- (a) the cost of providing the pension under that regulation for the period between the member leaving the employment in which the member was an active member and reaching the age of 65; and
- (b) the cost of providing for any increase in the rate of the benefits referred to in sub paragraph (a) for that period as a result of orders made under section 59 of the Social Security Pensions Act 1975 (so far as not already met by contributions made under regulation 2.C.5(1)).

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

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

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

- (a) except in a case falling within paragraph (b), by a single payment made within one month of the date on which the pension under regulation 2.D.11 became payable; or
- (b) if the Scottish Ministers agree, by not more than 5 equal annual instalments, the first of which is to be paid within one month of the date on which the pension under regulation 2.D.11 became payable and the others by 31st October in each of the following 4 scheme years.

(5) The following amounts must be determined by the Scottish Ministers on the advice of the scheme actuary—

- (a) the costs mentioned in paragraph (1);
- (b) the amount of the payment mentioned in paragraph (4)(a); and
- (c) the amount of each of the instalments payable under paragraph (4)(b).

### **Guarantees, indemnities and bonds**

**2.C.7.**—(1) This regulation applies if—

- (a) an employing authority fails to pay contributions in accordance with regulation 2.C.5 or 2.C.6; and
- (b) the employing authority is—
  - (i) a GMS practice;
  - (ii) a HBPMS practice;
  - (iii) a section 17C agreement provider; or

(iv) an OOH provider.

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

- (a) this Part; or
- (b) the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998<sup>(52)</sup>.

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

*Additional contributions to purchase additional pensions*

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

**2.C.8.**—(1) An active member may opt to make additional periodical contributions by monthly instalments during the contribution option period—

- (a) to increase by a specified amount the benefits payable to the member under Chapter 2.D (retirement benefits for members) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for 3 or 6 months under Chapter 2.E (death benefits)); or
- (b) to increase by a specified amount those benefits so payable and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 2.E (death benefits) in respect of the member.

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

(3) If a member exercises an option under paragraph (1), the member's employing authority must—

- (a) deduct the member's contributions from the member's earnings; and
- (b) pay them to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid.

(4) The annual amount of the periodical contributions payable at the beginning of the contribution option period must not be—

- (a) an amount less than the minimum amount; or
- (b) an amount other than a multiple of the minimum amount.

(5) In paragraph (4) "the minimum amount" means the amount that would, in accordance with tables prepared for the Scottish Ministers by the scheme actuary for the scheme year in which the contributions are paid, be the amount of the contributions required to secure an increase in the member's pension of—

- (a) £250; or
- (b) such other amount as the Scottish Ministers may for the time being determine,

assuming that the contributions are made in accordance with the option for the remainder of the option period.

(6) The tables referred to in paragraph (5)—

- (a) may specify different amounts for different descriptions of members; and

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<sup>(52)</sup> S.I. 1998/1451, as amended by S.I. 2001/3649, and 255, S.S.I. 2001/465, regulation 4 and Schedule 2, paragraph 2, S.S.I. 2004/62, regulation 3, S.S.I. 2006/307 and S.S.I. 2008/92.

(b) may be amended during a scheme year,

but no such amendment affects the contributions payable during that year under any option, except an option under which contributions begin to be paid after the date on which the amendment takes effect.

(7) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—

- (a) contributions made under regulation 2.C.10 (member's option to pay additional lump sum contributions to purchase additional pension); or
- (b) contributions made under regulation 2.C.11 (payment of additional lump sum contributions by employing authority),

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

(8) In this Part “the contribution option period”, in relation to an option under this regulation, means a period of whole years, that—

- (a) is specified in the option;
- (b) begins with the pay period in respect of which the first contribution is made under the option;
- (c) is not less than one year nor more than 20 years; and
- (d) does not end later than the member's 65th birthday.

### **Effect of member being absent or leaving and rejoining the scheme during the contribution option period**

**2.C.9.**—(1) This paragraph applies if during the contribution option period a member who has exercised the option under regulation 2.C.8—

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

(2) If paragraph (1) applies—

- (a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation 2.C.1 (contributions by members); and
- (b) where the member does so cease, the member may continue to make contributions in accordance with the option if the member resumes making contributions under regulation 2.C.1 before the end of the period of 12 months beginning with the day on which the member first ceased to pay those contributions.

(3) This paragraph applies if—

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

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

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

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

**2.C.10.**—(1) An active member may opt to make a single lump sum contribution—

- (a) to increase by a specified amount the benefits payable to the member under Chapter 2.D (retirement benefits for members) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for 3 or 6 months under Chapter 2.E (death benefits)); or
- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners or dependent children under Chapter 2.E (death benefits) in respect of the member.

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

- (a) not less than the minimum amount; or
- (b) in the case of an amount exceeding the minimum amount, a multiple of the minimum amount.

(3) In paragraph (2) “the minimum amount” means the amount that is, in accordance with tables prepared for the Scottish Ministers by the scheme actuary, the amount of the single contribution required at the time that the option is exercised to secure an increase in the member's pension of—

- (a) £250; or
- (b) such other amount as the Scottish Ministers may for the time being determine.

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

(5) If a member exercises an option under paragraph (1)—

- (a) the additional contribution is payable by the member to the employing authority—
  - (i) by deduction from the member's earnings or otherwise; and
  - (ii) before the end of the period of one month beginning with the day on which the member is notified by the Scottish Ministers that the option is accepted; and
- (b) the employing authority must pay it to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid or, as the case may be, the authority received payment of the contribution.

(6) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—

- (a) contributions made under regulation 2.C.8 (member's option to pay additional periodical contributions to purchase additional pension); or
- (b) contributions made under regulation 2.C.11 (payment of additional lump sum contributions by employing authority),

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



### **Payment of additional lump sum contributions by employing authority**

**2.C.11.**—(1) The employing authority of an active member may opt to make a single lump sum contribution—

- (a) to increase by a specified amount the benefits payable to the member under Chapter 2.D (retirement benefits for members) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member’s pension for 3 or 6 months under Chapter 2.E (death benefits)); or
- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners or dependent children under Chapter 2.E (death benefits) in respect of the member.

(2) An employing authority may only make a contribution under this regulation of an amount—

- (a) that is not less than the minimum amount (as defined in regulation 2.C.10(3)); and
- (b) in the case of an amount exceeding the minimum amount, a multiple of the minimum amount (as so defined).

(3) An employing authority may only exercise the option under paragraph (1) with the member’s consent, but may exercise it more than once in respect of the same member.

(4) The total increase in the member’s pension as a result of contributions made under this regulation, taken together with any increase as a result of—

- (a) contributions made under regulation 2.C.8 (member’s option to pay additional periodical contributions to purchase additional pension); or
- (b) contributions made under regulation 2.C.10 (member’s option to pay lump sum contribution to purchase additional pension),

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

(5) A contribution under this regulation must be paid by the employing authority to the Scottish Ministers within one month of the date on which the authority gave the Scottish Ministers notice under regulation 2.C.12(2).

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

**2.C.12.**—(1) A member exercising an option under regulation 2.C.8 or 2.C.10 must do so by giving notice in writing to the employing authority—

- (a) giving such information as may be required; and
- (b) at the same time provide the Scottish Ministers with a copy of that notice.

(2) An employing authority exercising an option under regulation 2.C.11 must do so by giving notice in writing to the Scottish Ministers, giving such information as may be required.

(3) An option under regulation 2.C.8, 2.C.10 or 2.C.11 may not be exercised during a period whilst the member is absent from work for any reason.

(4) For the purposes of this Part—

- (a) a member is treated as exercising an option under regulation 2.C.8 or 2.C.10 on the date on which the employing authority receives the member’s notice under paragraph (1); and
- (b) an employing authority is treated as exercising an option under regulation 2.C.11 on the date on which the Scottish Ministers receive the authority’s notice under paragraph (2).

(5) The Scottish Ministers may refuse to accept an option exercised under regulation 2.C.8, 2.C.10 or 2.C.11 and must do so if not satisfied that—

- (a) the member is in good health; and
  - (b) in the case of an option exercised under regulation 2.C.8, there is no reason why the member's health should prevent the member from paying the contributions for the whole contribution period.
- (6) If the Scottish Ministers refuse to accept such an option—
- (a) they must give notice in writing of that fact—
    - (i) in the case of an option exercised under regulation 2.C.8 or 2.C.10, to the member; and
    - (ii) in the case of an option exercised under regulation 2.C.11, to the employing authority and the member; and
  - (b) this Part applies as if the option had not been exercised.
- (7) This Part also applies as if an option under regulation 2.C.10 or 2.C.11 had not been exercised if—
- (a) in the case of an option under regulation 2.C.10, the payment is not received by the employing authority—
    - (i) before the end of the period of one month beginning with the day on which the Scottish Ministers notify the member of the acceptance of the option; or
    - (ii) if it is earlier, on or before the member's 65th birthday; and
  - (b) in the case of an option under regulation 2.C.11, the payment is not received by the Scottish Ministers—
    - (i) before the end of the period of one month beginning with the day on which the employing authority gave the Scottish Ministers notice under paragraph (2); or
    - (ii) if it is earlier on or before the member's 65th birthday.

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

**2.C.13.—**(1) A member may cancel an option under regulation 2.C.8(1) by giving the employing authority notice in writing.

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

(3) If it appears to the Scottish Ministers that the requirement in regulation 2.C.8(7) will not be met if the member continues to make periodical contributions under an option exercised under regulation 2.C.8, the Scottish Ministers may cancel the option by giving the member notice in writing.

(4) If the Scottish Ministers cancel such an option, the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods.

### **Effect of payment of additional contributions under this Chapter**

**2.C.14.—**(1) This regulation applies if—

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

(2) Subject to paragraph (9) the member's pension is increased by the full amount of the increase to be made in accordance with the terms of the option, after the final adjustment in that amount in accordance with regulation 2.C.17 (revaluation of increases bought under options).

(3) Paragraph (2) is without prejudice to any increase or reduction falling to be made in the total amount of the member's pension under Chapter 2.D (member's retirement benefits) as a result of the member becoming entitled to payment of the pension before or after reaching the age of 65 (see regulations 2.D.3 (late payment of pension with actuarial increase) to 2.D.5 (partial retirement (members aged at least 55))).

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

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

- (a) in the case of a pension under regulation 2.E.1 (surviving adult dependant's pension) the amount of which is determined under regulation 2.E.3 (active members) or 2.E.5 (deferred members), 37.5 per cent of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3));
- (b) in the case of a pension under regulation 2.E.1 the amount of which is determined under regulation 2.E.4 (pensioner members), 37.5 per cent of the amount of the increase in the member's pension as a result of the option;
- (c) in the case of a pension under regulation 2.E.8 (surviving children's pension) the amount of which is determined under regulation 2.E.10 (active members) or 2.E.12 (deferred members), the appropriate fraction (within the meaning of regulation 2.E.10 or, as the case may be, 2.E.12) of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3)); and
- (d) in the case of a pension under regulation 2.E.8 (surviving children's pensions) the amount of which is determined under regulation 2.E.11 (pensioner members), the appropriate fraction (within the meaning of that regulation) of the amount of the increase in the member's pension as a result of the option.

(6) Except as provided in regulation 2.D.5 (partial retirement (members aged at least 55)), no separate claim is required as respects any additional pension payable by virtue of this regulation.

(7) This regulation is subject to regulation 2.C.15.

(8) For the effect of the options under regulation 2.C.8 where this regulation does not apply, see regulation 2.C.16 (effect of part payment of periodical contributions).

(9) Paragraph (10) applies only to an option under regulation 2.C.8(1)(a), 2.C.10(1)(a) or 2.C.11(1)(a), where a pension is to be paid for either 3 or 6 months at the same rate as the member's pension was being paid at the date of that member's death.

(10) Any increase to the member's pension shall be included only in a benefit payable to a surviving partner or a dependent child in respect of the member under these Regulations whilst it is being paid at the rate and for the duration of one of the periods referred to in paragraph (9).

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

**2.C.15.**—(1) If a member in respect of whom an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised dies before the end of the period of 12 months beginning with the date on which the option was exercised—

- (a) an amount equal to the contributions paid under the option must be paid—
    - (i) in the case of an option under regulation 2.C.8 or 2.C.10, to the member’s personal representatives; and
    - (ii) in the case of an option under regulation 2.C.11, to the employing authority which made the contribution; and
  - (b) regulation 2.C.14(4) does not apply.
- (2) If a member in respect of whom an option under regulation 2.C.8 has been exercised dies after the end of the period of 12 months beginning with the date on which the option was exercised and before the end of the contribution option period, regulation 2.C.14(4) applies as if all contributions due after the date of death had been made.
- (3) If a member in respect of whom an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised becomes entitled to a pension under regulation 2.D.8 (early retirement on ill health (active members)) as a result of a claim made before the end of the period of 12 months beginning with the date on which the option was exercised—
- (a) regulation 2.C.14(2) and (4) does not apply; and
  - (b) an amount equal to the contributions paid under the option must be paid—
    - (i) in the case of an option under regulation 2.C.8 or 2.C.10, to the member; and
    - (ii) in the case of an option under regulation 2.C.11, to the employing authority which made the contribution.
- (4) If a member in respect of whom an option under regulation 2.C.8 has been exercised becomes entitled to a pension under regulation 2.D.8 before the end of the contribution option period as a result of a claim made after the end of the period of 12 months beginning with the date on which the option was exercised, regulation 2.C.14(2) and (4) applies as if all contributions under the option had been made.
- (5) If a member in respect of whom an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised—
- (a) becomes entitled to a pension under regulation 2.D.4 (early payment of pensions with actuarial reduction), 2.D.10 (early retirement on ill health (deferred members)), or 2.D.11 (early retirement on termination of employment by employing authority); or
  - (b) becomes entitled to a pension under regulation 2.D.5 before reaching the age of 65,
- the increase in the member’s pension under Chapter 2.D (entitlement to pensions) which would otherwise be due under regulation 2.C.14(2) or regulation 2.C.16 is reduced.
- (6) The amount of the reduction is such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the increase before the member reaches 65.
- (7) This regulation is subject to regulation 2.C.16.

**Effect of part payment of periodical contributions**

- 2.C.16.**—(1) This regulation applies if—
- (a) the full number and amount of contributions due under an option under regulation 2.C.8 for the whole contribution option period are not made; and
  - (b) regulation 2.C.15(1) to (4) does not apply.
- (2) The increase in the member’s pension under Chapter 2.D is the appropriate proportion of the increase that would have been made under regulation 2.C.14(2) if the full number and amount of contributions had been made (but taking account of regulation 2.C.15(5) if that applies).

(3) In the case of an option under regulation 2.C.8(1)(b), the increase in any benefit payable under Chapter 2.E (death benefits) in respect of the member is the appropriate proportion of the increase that would have been made under regulation 2.C.14(4) if the full number and amount of contributions had been made (but taking account of regulation 2.C.15(5) if that applies).

(4) For the purposes of paragraphs (2) and (3), the appropriate proportion is calculated in accordance with such method as the scheme actuary may determine and specify in guidance given to the Scottish Ministers.

(5) In making a determination under paragraph (4), the scheme actuary must have regard to—

- (a) the proportion that the total contributions paid bears to the full amount of contributions due under an option under regulation 2.C.8 for the whole contribution option period; and
- (b) the preservation requirements.

### **Revaluation of increases bought under options: members' pensions**

**2.C.17.—**(1) This regulation applies for the purposes of determining the final amount of the increase in a member's pension as a result of the exercise of an option under regulation 2.C.8, 2.C.10 or 2.C.11.

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

Step 1—

calculate the amount of the increase in accordance with regulations 2.C.14 to 2.C.16 immediately before that date to find “the basic amount”;

Step 2—

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

Step 3—

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

Step 4—

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

Step 5—

divide the Step 4 amount by the Step 3 amount to find the Step 5 factor; and

Step 6—

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

(3) The amount of the increase in a member's pension as a result of the exercise of an option under regulation 2.C.8, 2.C.10 or 2.C.11 as at the beginning date for that pension is—

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

(4) In this regulation “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act).

### *Repayment of contributions*

#### **Repayment of contributions**

**2.C.18.**—(1) The contributions made by a member under this Chapter are not repayable in any circumstances except if—

- (a) paragraph (2) applies; or
- (b) Chapter 5 of Part 4 of the 1993 Act (early leavers: cash transfer sums and contribution refunds) applies and the payment is made in accordance with that Chapter.

(2) This paragraph applies if—

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

(3) If paragraph (1)(b) applies, the person is entitled to be paid the amount to which the person is entitled under Chapter 5 of Part 4 of the 1993 Act, less—

- (a) such part of any contributions equivalent premium paid in respect of the person as is permitted by or under section 61 of the 1993 Act; and
- (b) an amount equal to the income tax payable under section 205 of the Finance Act 2004 (short service refund lump sum charge) as a result of the repayment.

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

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

(6) A person—

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

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

(7) Subject to paragraphs (8) and (9) the interest is calculated on a compound basis at the rate of 2.5 per cent per year, with yearly rests, for the period starting on 1st April after the contributions were paid and ending with the day the member leaves pensionable service.

(8) Paragraph (7) does not apply if paragraph (1)(b) applies and the person is entitled to a greater amount of interest under Chapter 5 of Part 4 of the 1993 Act.

(9) So far as the contributions were paid under another scheme and were included in a transfer payment to the scheme—

- (a) interest for the period before the transfer payment was made is calculated in accordance with the scheme making the transfer payment (subject to any provision made in any enactment applicable to the transfer); and

- (b) paragraph (7) does not apply as respects that period.

## CHAPTER 2.D

### MEMBERS' RETIREMENT BENEFITS

#### *Entitlement to pensions*

#### **Normal retirement pensions**

**2.D.1.**—(1) Subject to paragraph (2), regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) and the following provisions of this Part the general rule is that a member is entitled to a pension payable for life in respect of any period of pensionable service (“the relevant service”) if the member—

- (a) has reached the age of 65; and
- (b) either—
  - (i) has ceased to be employed in NHS employment and has claimed payment of the pension; or
  - (ii) has reached the age of 75.

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

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

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

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

$$\frac{RP}{60} \times \frac{LRS}{365}$$

where—

RP is the member’s reckonable pay; and

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

(5) A claim referred to in paragraph (1)(b)(i) and made in accordance with regulation 2.J.2 (claims for benefits) takes effect from the date the claim is received by the Scottish Ministers.

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

(7) In this Chapter “NHS employment” includes employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(53).

### **Pension credit members**

**2.D.2.**—(1) The general rule is that a pension credit member is entitled to a pension for life derived from the member's pension credit rights if the member has reached 65 and has claimed payment of the pension.

(2) The pension becomes payable—

- (a) when the pension credit member reaches 65; or
- (b) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.

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

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

### **Late payment of pension with actuarial increase**

**2.D.3.**—(1) This regulation applies if a member becomes entitled to immediate payment of pension under regulation 2.D.1 after reaching the age of 65.

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

- (a) to the member's pensionable service before that age; and
- (b) to any contributions paid under regulations 2.C.8, 2.C.10 or 2.C.11 before that age,

is increased.

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

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

### **Early payment of pensions with actuarial reduction**

**2.D.4.**—(1) A member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the member—

- (a) has reached the age of 55;
- (b) meets the condition in regulation 2.D.1(2)(a) or (b);
- (c) has ceased to be employed in NHS employment; and
- (d) has claimed payment of the pension.

(2) The amount of the annual pension under this regulation is calculated in the following way—

- (a) first, as mentioned in regulation 2.D.1(4) (and, if additional pension is payable, in accordance with regulation 2.C.14(2) or 2.C.16(2)); and
- (b) second, that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.



(3) A claim under paragraph (1) must be made by notice in writing in such form as the Scottish Ministers require and takes effect—

- (a) in the case of a deferred member, from the date specified in the claim as the date on which the pension is to become payable; and
- (b) in the case of an active member, from the day immediately following the day on which the member ceased to be employed in NHS employment.

(4) A member is not entitled to a pension under this regulation if the Scottish Ministers determine, having taken advice from the scheme actuary, that the pension, as reduced under paragraph (1), would be insufficient to meet their liability to provide a guaranteed minimum pension.

### **Partial retirement (members aged at least 55)**

**2.D.5.**—(1) An active member may exercise an option under this regulation if—

- (a) the member has reached the age of 55 and—
  - (i) continues to be employed in the employment in which the member is an active member; or
  - (ii) where the member has more than one such employment, in at least one of those employments;
- (b) the member would be entitled to a pension for life, by virtue of regulation 2.D.1(1)(b)(i) and not regulation 2.D.1(1)(b)(ii), if the member had—
  - (i) reached the age of 65;
  - (ii) ceased to be so employed; and
  - (iii) claimed payment of the pension;
- (c) the terms on which the member holds the employment or employments referred to in sub paragraph (a) change; and
- (d) as a result of the change described in sub-paragraph (c) the annual rate of the member’s pensionable pay is reduced to 90 per cent or less of the amount of the member’s pensionable pay during the period of 12 months ending with the option day.

(2) If the member was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(d), that paragraph applies as if the member’s pensionable pay during that period were—

$$PP \times \frac{365}{N}$$

where—

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

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

(3) The option may only be exercised by notice in writing in such form as the Scottish Ministers require and must be accompanied by a statement in writing by the employing authority or employing authorities, that the conditions in paragraph (1)(c) and (d) are met.

- (4) The option must specify—
  - (a) the percentage of the member’s pension (excluding any additional pension) in respect of which the member claims immediate payment (“the specified percentage”); and
  - (b) whether the member claims immediate payment of additional pension (if any).
- (5) A member who duly exercises the option under this regulation is entitled—

- (a) in the case of a member who has reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.1 if the member had ceased to be employed on the option day (disregarding any additional pension, but subject to any increase under regulation 2.D.3);
  - (b) in the case of a member who has not reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.4 if the member had ceased to be employed on the option day (disregarding any additional pension); and
  - (c) if the option specifies that that the member claims immediate payment of additional pension, the additional pension, subject–
    - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 2.D.3 if the member had ceased to be employed on the option day; and
    - (ii) in a case within sub-paragraph (b), to a reduction of the same amount as would have been made in that pension under regulation 2.D.4 if the member had so ceased.
- (6) The specified percentage must be such that–
- (a) the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation 2.D.14 and disregarding any additional pension)–
    - (i) is not less than the amount of the pension payable by reference to 20 per cent of the member’s pensionable service at the end of the option day (disregarding any additional pension); and
    - (ii) taken together with any such increase to which the member becomes entitled as a result of the option (before any such commutation), is not less than 0.05 per cent of the member’s lifetime allowance on the option day;
  - (b) the percentage of the pension (other than additional pension) in respect of which the member does not require immediate payment is not less than the amount of the pension payable by reference to 20 per cent of the member’s pensionable service at the end of the option day (disregarding any additional pension); and
  - (c) that pensionable service referred to in sub-paragraph (b) is at least one year, within the meaning of regulation 2.A.3 (meaning of pensionable service: part-time service) in the case of a part-time member at the end of that date.
- (7) The option under this regulation may only be exercised on no more than 2 occasions, and the Scottish Ministers must take advice from the scheme actuary regarding–
- (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);
  - (b) any benefits to be paid after the exercise of the second option; and
  - (c) the final payment.
- (8) In this regulation “the option day” means the day before the reduction in pensionable pay by virtue of which the option is exercisable takes effect.
- (9) For the purposes of this Part, a member who has exercised the option under this regulation–
- (a) is a pensioner member as respects the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that pension represents as respects which the member is an active member on the option day;
  - (b) if the member continues in pensionable service after the option day, is an active member as respects–

- (i) the pensionable service after that day in which the member continues; and
- (ii) so much of the pensionable service as respects which the member is an active member on the option day as does not fall within sub paragraph (a) (“the unspecified service”); and
- (c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.

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

**2.D.6.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation 2.D.5—

- (a) during the period of 12 months beginning with the day after the option day, the terms on which the member holds the employment or employments referred to in 2.D.5(1)(a) change again; and
- (b) either of the following is the case—
  - (i) as a result the member’s pensionable pay in that employment or those employments is increased to more than 90 per cent of the member’s pensionable pay during the period 12 months ending with the option day; or
  - (ii) following an increase referred to in head (i), the member’s pensionable pay in that employment or those employments is reduced to less than 90 per cent of the member’s pensionable pay during the period of 12 months ending with the option day.

(2) In the circumstances referred to in—

- (a) paragraph (1)(b)(i), the amount of the member’s pension mentioned in regulation 2.D.5(5) (a) and (b) shall be abated to zero from the first pension day immediately following the day on which the level of the member’s pensionable pay increased;
- (b) paragraph (1)(b)(ii), subject to any adjustments in accordance with sub paragraph (c), the member is again entitled to receive payment of the full amount of the pension mentioned in sub paragraphs (a) and (b) of that regulation as from the first pension day immediately following the day on which the level of the member’s engagement reduced; and
- (c) where sub paragraph (b) applies, before restoring the payment of a pension, the Scottish Ministers must have regard to the advice of the scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with sub paragraph (a).

(3) If the member was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(b)(i), that paragraph applies as if the member’s pensionable pay during that period were—

$$PP \times \frac{365}{N}$$

where—

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

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

(4) If, in the opinion of the Scottish Ministers, had the terms and conditions of the member’s employment remained the same after the option day (apart from pensionable pay), the annual rate

of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b)(i)–

- (a) paragraph (2)(a) does not apply; and
- (b) this regulation applies as if paragraph (1)(b)(i) referred to that annual rate instead of the actual annual rate.

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

- (a) that event is treated as if the terms on which the member holds the employment in respect of which the option was exercised (“the option employment”) had changed again; and
- (b) the member’s pensionable pay in the further employment is treated as an increase in the member’s pay in the option employment.

(6) In this regulation “the option day” has the same meaning as regulation 2.D.5(8).

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

**2.D.7.**—(1) This regulation provides for the application of regulations 2.D.5 and 2.D.6 if a person is an active member in 2 or more part-time employments held concurrently on the option day.

(2) Those regulations apply in relation to each of the employments as if it were the only employment held by the member on that day, but subject to the following modifications.

(3) In regulation 2.D.5(1) for sub-paragraph (d) substitute–

- “(d) as a result the sum of the annual rate of the member’s pensionable pay in that employment and every other employment held by the member on the option day is reduced to 90 per cent or less of the sum of–
  - (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
  - (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(4) In regulation 2.D.5(2)–

- (a) after “paragraph (1)(d)” insert “in the employment or any other employment referred to in that paragraph”; and
- (b) after “that period” insert “in that employment”.

(5) In regulation 2.D.6(1) for sub-paragraph (b) substitute–

- “(b) as a result the annual rate of the member’s pensionable pay in that employment is increased to more than 90 per cent of the sum of–
  - (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
  - (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(6) In regulation 2.D.6(3)–

- (a) after “paragraph (1)(b)(i)” insert “in the employment or any other employment referred to in that paragraph”; and
- (b) after “that period” insert “in that employment”.

(7) For regulation 2.D.6(4) substitute–

“(4) If, in the opinion of the Scottish Ministers, had the terms and conditions of the member’s employment or any other such employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b) for that employment–

- (a) paragraph (2)(a) does not apply; and
- (b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.”.

(8) Where–

- (a) a member’s pension is abated in accordance with regulation 2.D.6(2)(a), in the circumstances described in regulation 2.D.6(1)(b); and
- (b) the member’s pensionable pay does not reduce in the manner described in regulation 2.D.6(1)(c),

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

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

#### **Early retirement on ill health (active members)**

**2.D.8.**—(1) A pension payable under this regulation known as an ill health pension and may be paid at 2 different tiers known as a lower tier ill health pension and an upper tier ill health pension.

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

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

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

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

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

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

- (a) is increased by the enhancement period where the member has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous; and
- (b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if the member's pensionable service before and after the break is treated separately.

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

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

$$\frac{TPSa}{TPSn}$$

where—

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

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

(8) Subject to paragraph (9), in this regulation "the member's assumed service" means the further pensionable service that the member could have counted if the member had continued in service until reaching the age of 65.

(9) To the extent that any increase under paragraph (8) would cause a member's pensionable service to exceed the limit of 45 years provided for in regulation 2.A.3(3), the amount of any excess will be reduced accordingly.

(10) This regulation is subject to—

- (a) regulation 2.G.4 (effect of re-employment on upper tier ill health pensions); and
- (b) regulation 2.G.5 (re-employed lower tier ill health pensioners).

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

- (a) being dismissed from such employment (unless the Scottish Ministers are satisfied that the member was dismissed because of the member's infirmity);
- (b) retiring or resigning from such employment at a time when the member was the subject of disciplinary proceedings or had been notified that such proceedings were being contemplated; or
- (c) otherwise retiring or resigning from such employment unless at the time of doing so the member's employing authority has notified the Scottish Ministers in writing that the member's physical or mental infirmity is the reason for the termination of that employment and the Scottish Ministers are satisfied that is the case.

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

(13) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (3)(a), the Scottish Ministers must have

regard to the factors in paragraph (15) (no one of which is decisive) and disregard the factors in paragraph (16).

- (14) The factors to be taken into account for paragraph (12) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
  - (d) any other matter which the Scottish Ministers considers appropriate.
- (15) The factors to be taken into account for paragraph (13) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having due regard to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience; and
  - (e) any other matter which the Scottish Ministers considers appropriate.
- (16) The factors to be disregarded for paragraph (13) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (17) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Scottish Ministers consider—

- (a) that it would be reasonable for the member to refuse;
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a); or
    - (ii) engaging in regular employment of like duration under paragraph (3)(a), before the member reaches normal benefit age; or
  - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;
- “regular employment of like duration” means—
- (d) in the case of a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's current pensionable service as a non-GP provider; and
  - (e) in all other cases, where prior to retiring from employment that is pensionable the member was employed—
    - (i) on a whole-time basis, regular employment on a whole-time basis; and
    - (ii) on a part-time basis, regular employment on a part-time basis,regard being had to the number of hours, half-days and sessions the member worked in that employment.

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

**2.D.9.**—(1) This regulation applies if—

- (a) in the opinion of the Scottish Ministers a member meets the condition in regulation 2.D.8(2)(a); and
- (b) at the time the member is awarded a pension under that regulation the Scottish Ministers give the member notice in writing that the member's case may be considered once within a period of 3 years commencing with the date of that award to determine whether the member meets the condition in regulation 2.D.8(3)(a) at the date of such a consideration.

(2) A member to whom such a notice under paragraph (1)(b) has been given may apply to the Scottish Ministers for a review of whether he or she subsequently meets the condition in regulation 2.D.8(3)(a) if—

- (a) the member makes the application in writing within 3 years of the date of issue of the notice;
- (b) the request is accompanied by further written medical evidence—
  - (i) relating to whether the condition in regulation 2.D.8(3)(a) is satisfied at the date of the Scottish Minister's review; and
  - (ii) that relates to the same physical or mental infirmity as a result of which the member met the condition in regulation 2.D.8(2)(a); and
- (c) no previous application has been made under this paragraph.

(3) If, after considering the further medical evidence provided by the member, the Scottish Ministers determine that the member meets the condition in Regulation 2.D.8(3)(a), then as from the date on which that determination is made the member—

- (a) ceases to be entitled to a lower tier ill health pension; and



- (b) becomes entitled to an upper tier ill health pension under regulation 2.D.8, which is to be calculated as if regulation 2.D.8(8) included the words “from the date of the Scottish Ministers' determination under regulation 2.D.9” after “continued in service”.

### **Early retirement on ill health (deferred members)**

**2.D.10.**—(1) A deferred member who has not reached the age of 65 is entitled to immediate payment of a pension that is payable for life if—

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

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

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

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

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

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

- (6) The factors to be taken into account for paragraph (4) are—
  - (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
  - (d) any other matter which the Scottish Ministers consider appropriate.
- (7) The factors to be taken into account for paragraph (5) are—
  - (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;

- (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
  - (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having due regard to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience; and
  - (e) any other matter which the Scottish Ministers consider appropriate.
- (8) The factors to be disregarded for paragraph (5) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (9) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Scottish Ministers consider—
- (a) that it would be reasonable for the member to refuse; or
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii); or
    - (ii) engaging in regular employment of like duration under paragraph (1)(a) before the member reaches age 65; or
  - (c) that through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;
- “permanently” means the period until age 65; and
- “regular employment of like duration” means—
- (a) in the case of a member who was a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's pensionable service as a non-GP provider immediately before that service ceased; and
  - (b) in all other cases, where prior to leaving employment that was pensionable the member was employed—
    - (i) on a whole-time basis, regular employment on a whole-time basis; or
    - (ii) on a part-time basis, regular employment on a part-time basis,regard being had to the number of hours, half-days and sessions the member worked in that employment.

### Early retirement on termination of employment by employing authority

**2.D.11.**—(1) A member other than a non-GP provider who has reached the age of 55, but not 65, is entitled to a pension payable for life if—

- (a) the employment in which the member is an active member is terminated by the member’s employing authority and the member has ceased to be employed in NHS employment;
- (b) the member has 2 years of qualifying service;
- (c) the member’s employing authority certifies that the member—
  - (i) has at least 2 years of continuous employment determined in accordance with any terms and conditions applying to the employment; and
  - (ii) has not unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
- (d) the Scottish Ministers certify that the member’s employment is terminated—
  - (i) by reason of redundancy; or
  - (ii) in the interests of the efficiency of the service in which the member is employed; and
- (e) the member has claimed payment of the pension.

(2) A certificate under paragraph (1)(d)(ii) may only be given with the agreement of the employing authority.

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

(4) Subject to paragraph (6), the amount of the annual pension payable under this regulation (disregarding any additional pension) is given by the formula—

$$\frac{RP}{60} \times \frac{LPS}{365}$$

where—

RP is the member’s reckonable pay; and

LPS is the length of the member’s pensionable service, expressed in days.

(5) A claim under paragraph (1)(e)—

- (a) must be made in writing to the Scottish Ministers within 6 months of the employment terminating; and
- (b) must contain such information as the Scottish Ministers may from time to time require.

(6) If—

- (a) the member has received a related payment in respect of the cessation of the employment;
- (b) the terms and conditions relating to the employment require that payment to be reduced to take account of the additional contributions the employing authority must make to the Scottish Ministers in accordance with regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pension under regulation 2.D.11); and
- (c) that payment has not been so reduced,

the amount of that payment (or, if there is more than one such payment, the aggregate amount of those payments) is deducted from the amount of the pension.

(7) In paragraph (6) “related payment” means—

- (a) a redundancy payment under the Employment Rights Act 1996(54); or

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(54) 1996 c. 18.

- (b) a corresponding payment under the arrangement of the Whitley Councils for the Health Services of Great Britain.
- (8) This regulation does not apply to practice staff.

**Option to have periods of service treated separately where pay is reduced**

- 2.D.12.**—(1) This regulation applies if—
- (a) the reckonable pay of an active member who has at least 2 years of qualifying service is reduced; and
  - (b) the reduction occurs in circumstances specified in paragraph (2).
- (2) The circumstances are that—
- (a) the member is transferred from one employment to another;
  - (b) the member leaves one employment and takes up another in circumstances approved by the Scottish Ministers for the purposes of this regulation; or
  - (c) the member’s duties change while the member continues in the same employment, otherwise than at the member’s request or as a result of something done by the member.
- (3) The member may opt to be treated for the purposes of the scheme in accordance with this regulation as follows—
- (a) the member is treated as a deferred member of the scheme as respects the earlier service; and
  - (b) if the member is an active member of the scheme in the later service, for the purposes of this Chapter the member is treated as respects the later service as if the member became an active member for the first time on the day that service began.
- (4) But nothing in paragraph (3) prevents the member’s earlier service and later service counting as a single continuous period for the purposes of regulation 2.A.5 (qualifying service).
- (5) If the member’s pensionable service is to be increased under regulation 2.D.8(5)—
- (a) the member’s pensionable service will count as a continuous period for the purposes of calculating to what extent the pensionable service on which the pension is based should be increased; and
  - (b) the increase will apply only in respect of the pension attributable to the later service.
- (6) If a member has duly exercised the option under this regulation, the member is treated as mentioned in paragraph (3) (but subject to paragraphs (4) and (5)) unless paragraph (7) applies.
- (7) This paragraph applies if—
- (a) at the time that the member first becomes entitled to a pension under the scheme in respect of the earlier service or the later service; or
  - (b) if it is earlier, at the time of the member’s death,
- in the opinion of the Scottish Ministers the benefits payable to or in respect of the member would be more valuable if the option and any other options exercised by the member under this regulation were disregarded.
- (8) The option under this regulation may only be exercised by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require before the end of the period of 3 months beginning with the first day of the later service.
- (9) In this regulation—
- “the earlier service” means—

- (a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has left; and
- (b) in the case of a change of circumstances within paragraph (2)(c), the service in the employment before the change in the member's duties took effect; and

“the later service” means–

- (a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has begun; and
- (b) in the case of a change of circumstances within paragraph (2)(c), the service in the employment after the change in the member's duties took effect.

### **Exceptions to requirement that NHS employment must have ceased**

**2.D.13.**—(1) A member is not prevented from becoming entitled to a pension under regulation 2.D.1 in respect of relevant service because of continuing in NHS employment if paragraph (2) applies.

(2) This paragraph applies if–

- (a) the member is an active member in the NHS employment and that employment is employment into which the member has been transferred as a result of a transfer of an undertaking to the employing authority; and
- (b) the member is a deferred member in respect of pensionable service that ceased before the member commenced the employment referred to in sub-paragraph (a).

(3) In paragraph (1), “relevant service” means the pensionable service referred to in paragraph (2) (b) in respect of which the member is a deferred member.

(4) A member is not prevented from becoming entitled to a pension under regulation 2.D.11 in respect of pensionable service in an employment (“the old employment”) because of continuing in NHS employment if paragraph (5) applies.

(5) This paragraph applies if–

- (a) before the termination of the old employment the member held 2 or more NHS employments concurrently; and
- (b) the member elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member.

(6) For the effect of a pension becoming payable as a result of paragraph (2) applying, see–

- (a) Chapter 2.G (re-employment and rejoining the scheme); and
- (b) Chapter 2.H (abatement).

### *Options to exchange pension for lump sum*

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

**2.D.14.**—(1) A member other than a pension credit member may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.

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

(3) An option under paragraph (1) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(4) In paragraphs (2) and (3) “annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Chapter apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time payment would first be due.

(5) A member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 (pension schemes etc.) of the 2004 Act (see, in particular, section 241 of, and paragraph 1 of Schedule 29 to, that Act).

(6) If the member has a guaranteed minimum under section 14 (earner’s guaranteed minimum) of the 1993 Act in relation to the whole or part of a pension, paragraph (1) only applies to so much of the pension as exceeds that guaranteed minimum, multiplied by such factor as is indicated for a person of the member’s description in tables provided by the scheme actuary.

(7) The option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require—

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

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

**2.D.15.**—(1) An active member, a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the Scottish Ministers are satisfied that the conditions for the lump sum to be a serious ill health lump sum for the purposes of the 2004 Act will be met (see paragraph 4 of Schedule 29 to that Act).

(2) For the purposes of paragraph (1), a “relevant pension” is a pension payable to that member under regulation—

- (a) 2.D.1 (normal retirement pensions);
- (b) 2.D.2 (pension credit members' pensions);
- (c) 2.D.8 (early payment of pensions: ill health); or
- (d) 2.D.10 (early retirement on ill health (deferred members)).

(3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 2.D.1 or 2.D.2, before or at the time when the pension becomes payable; and
- (b) in the case of a pension payable under regulation 2.D.8 or 2.D.10, before the pension becomes payable to the member.

(4) An active member aged 65 or over who exercises the option is to be paid, as soon as is reasonably practicable and before reaching the age of 75, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 if at the appropriate time the member had become entitled to a pension under regulation 2.D.1; and
- (b) the total annual amount of the pension to which the member would have been entitled under regulation 2.D.1 after exercising that option, multiplied by 5.

(5) A pension credit member who exercises the option is to be paid, as soon as is reasonably practicable and before reaching the age of 75, an amount equal to the annual amount of the pension to which the member would have been entitled under regulation 2.D.2 after exercising that option, multiplied by 5.

(6) An active member entitled to a pension under regulation 2.D.8 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time; and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.8 after exercising that option, multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 2.D.10 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—
- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time; and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.10 after exercising that option, multiplied by 5.
- (8) In this regulation “the appropriate time” means—
- (a) for the purposes of paragraphs (4) and (5) the time when the option under this regulation is exercised; and
  - (b) for the purposes of paragraphs (6) and (7) the time payment of the pension under regulation 2.D.8 or, as the case may be, 2.D.10 would otherwise first be due.
- (9) In this regulation references to the “annual amount” of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the appropriate time.
- (10) The option under this regulation may only be exercised by notice in writing to the Scottish Ministers in such form as the Scottish Ministers require.

#### *Pension debit members and pension credit members*

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

**2.D.16.**—(1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under section 31 (reduction of benefit) of the 1999 Act.

#### **Pension credit member’s rights**

**2.D.17.**—(1) If regulation 7(5) of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(55)</sup> (early or deferred retirement) applies, the Scottish Ministers must be reasonably satisfied that the requirements of that regulation have been met.

(2) Section 68A(2)(a) of the 1993 Act (safeguarded rights)<sup>(56)</sup> applies to the safeguarded rights of pension credit members.

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

#### *Allocation*

#### **Election to allocate pension**

**2.D.18.**—(1) A member may elect to allocate a part of the annual amount of the member’s pension under the scheme for the provision of a pension after the member’s death for a single person who is the member’s spouse or civil partner or another person who is the member’s dependant within the meaning of paragraph 15 of Schedule 28 to the 2004 Act if conditions A and B are met.

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<sup>(55)</sup> S.I. 2000/1054.

<sup>(56)</sup> Section 68A was amended by the Pensions Act 2007 (c. 22), Schedule 4, paragraph 27.

(2) Condition A is that the member has not become entitled to the payment of any pension under the scheme other than a pension payable under regulation 2.D.5 (partial retirement: members aged at least 55).

(3) Condition B is that in the case of a member who is not making the election on claiming the pension, the member—

- (a) has reached the age of 65 and has completed 45 years of pensionable service; or
- (b) the member has reached the age of 70.

(4) Any pension provided as a result of such an election must be calculated in accordance with tables prepared by the scheme actuary.

(5) The member may not elect to allocate more than one-third of the member's relevant annual pension.

(6) The member may not elect to allocate an amount that would result in—

- (a) the allocated annual pension exceeding the member's unallocated relevant annual pension;
- (b) the allocated pension exceeding such amount as the Scottish Ministers may determine for the purposes of this paragraph, after consultation with the scheme actuary, having regard to any restrictions imposed under Part 4 of the Finance Act 2004; or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 2.J.5 (commutation of small pensions) by way of commutation of a pension of that amount if the person entitled to the pension was not entitled to any other benefits under the scheme.

(7) The annual pension that is allocated must be an exact number of pounds.

(8) If a member—

- (a) elects to allocate a part of the member's pension under paragraph (1) after reaching the age of 65 and whilst in pensionable service; and
- (b) dies before the pension becomes payable,

for the purposes of paragraphs (5) to (7) the member is treated as entitled to the relevant pension to which the member would have been entitled if the member had become entitled to the pension immediately before death.

(9) References in this regulation to the member's relevant pension, in relation to any pension, are references to so much of the pension as would be payable if the member had exercised the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) so as to obtain the maximum lump sum possible.

### **Procedure for election under regulation 2.D.18**

**2.D.19.**—(1) An election under regulation 2.D.18 in respect of a member's pension must be made—

- (a) at the time when the member claims the pension or, if the member does not become entitled to the pension at that time, when the member does become so entitled; or
- (b) if the member is in pensionable service after reaching the age of 65, at any time after reaching that age and before reaching the age of 75.

(2) The election must be made by giving notice in writing to the Scottish Ministers.

(3) The notice must be in such form and contain such information as the Scottish Ministers require.

(4) Subject to paragraphs (6) and (7), an election under regulation 2.D.18 takes effect once it has been accepted by the Scottish Ministers.



- (5) The election may not be withdrawn, amended or revoked after it has taken effect.
- (6) The election does not take effect if—
  - (a) the member or the person in whose favour the election was made (“the beneficiary”) dies on or before the day on which the Scottish Ministers accept it; or
  - (b) the Scottish Ministers are not satisfied that at the time when the election is made the member is in good health.
- (7) The election is treated as not having taken effect if the beneficiary dies before the member is notified in writing that the Scottish Ministers have accepted the election.

### **Effect of allocation**

- 2.D.20.**—(1) If an election under regulation 2.D.18 for the allocation of a member’s pension to another person (“the beneficiary”) has taken effect—
- (a) the member’s pension is reduced accordingly (even if the beneficiary predeceases the member); and
  - (b) if the beneficiary survives the member, on the member’s death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 2.D.18.
- (2) An allocation is disregarded for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither—
- (a) the member’s spouse or civil partner on the date when the member becomes entitled to the pension or dies; nor
  - (b) a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to the 2004 Act when the member dies.
- (3) References in this Part to pensions under this Chapter do not include pensions under this regulation except where the context otherwise requires.
- (4) Any such pension is payable in addition to any pension payable to the beneficiary in respect of the member’s death under Chapter 2.E (death benefits) of this Part.

### *Dual capacity membership*

### **Dual capacity membership**

- 2.D.21.**—(1) This paragraph applies if a member is—
- (a) a member of the scheme of 2 or more of the kinds specified in paragraph (2);
  - (b) a pensioner member in respect of 2 or more pensions; or
  - (c) a deferred member in respect of 2 or more pensions.
- (2) The kinds of member are—
- (a) an active member;
  - (b) a deferred member;
  - (c) a pensioner member; and
  - (d) a pension credit member.
- (3) If paragraph (1) applies, the general rule is that—
- (a) benefits are payable to the member under this Chapter (or to any person to whom the member has opted to allocate pension under regulation 2.D.18) as if the member were 2

- or more members of the kinds in question (so that 2 or more pensions or lump sums are payable in respect of the one member); and
- (b) the amounts payable are determined accordingly.
- (4) The rule in paragraph (3) is subject to any indication to the contrary and, in particular, does not affect the interpretation of—
- (a) regulation 2.A.2(3) (meaning of pensionable service);
  - (b) regulation 2.D.5(9) in a case where a member is both an active member and a pensioner member by virtue of that regulation;
  - (c) regulation 2.D.12;
  - (d) regulation 2.G.3 (exception to general rule in 2.G.2 about separate treatment of pay and service);
  - (e) regulation 2.G.4 (effect of re-employment on upper tier ill health pensions);
  - (f) regulation 2.G.5 (re-employed lower tier ill health pensioners);
  - (g) regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking); or
  - (h) Chapter 2.H (abatement).
- (5) If a person who is a pension credit member is entitled to 2 or more pension credits—
- (a) benefits are payable to the person under the scheme (or to any person to whom the member has opted to allocate pension under regulation 2.D.18) as if the person were 2 or more persons, each being entitled to one of the pension credits (so that 2 or more pensions or lump sums are payable to the one pension credit member); and
  - (b) the amounts of those benefits are determined accordingly.

*Contracting-out obligations (GMPs, etc.)*

**Guaranteed minimum pensions etc.**

**2.D.22.**—(1) If a member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of the 1993 Act in relation to benefits under the scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a member and such a member's rights under the scheme not to be met in the case of the member;
  - (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member; and
  - (c) the following provisions are without prejudice to the generality of this paragraph.
- (2) If apart from this rule—
- (a) no pension would be payable to the member under the scheme; or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension at a weekly rate equal to the guaranteed minimum is payable to the member for life from the date on which the member reaches State pension age or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

- (3) Subject to paragraph (4), if—
- (a) on reaching State pension age the member is still in employment (whether or not it is scheme employment); and

- (b) it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

paragraph (2) does not apply until the member leaves employment.

(4) If the member continues in employment for a further 5 years after reaching State pension age and does not then leave employment, the member is entitled from the end of that period to so much of the member's pension under this Chapter as equals the member's guaranteed minimum (or, as the case may be, to so much of the member's pensions under this Chapter as together have a weekly rate equal to the member's guaranteed minimum), unless the member consents to a further postponement of the entitlement.

(5) If paragraph (3) or (4) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 15 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) of the 1993 Act.

(6) If—

- (a) before State pension age the member becomes entitled to the immediate payment of a pension; and
- (b) the member has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of the pension,

the weekly rate of the pension, so far as attributable to that service, must not be less than that guaranteed minimum, multiplied by such factor as is indicated in tables provided by the scheme actuary for a person of the member's age and sex at the date on which the pension becomes payable.

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out by reference to the scheme, and either—

- (a) all the person's rights to benefits under the scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 9(2B) of the 1993 Act ("the person's contracting-out rights"), have been transferred under Chapter 2.F (transfers); or
- (b) the person has no rights to benefits under the scheme apart from the person's contracting out rights.

(8) If paragraph (7) applies—

- (a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to his or her guaranteed minimum, if any; and
- (b) from the date on which the person reaches pension age the person is entitled to a pension in respect of his or her rights under section 9(2B) of the 1993 Act,

but a person falling within paragraph (7) is not to be regarded as a pensioner for the purposes of Chapter 2.E (death benefits).

(9) Paragraphs (2) to (8) do not apply to—

- (a) a pension that is forfeited—
  - (i) as a result of a conviction for treason; or
  - (ii) in a case where an offence within regulation 2.J.7(2)(b) (forfeiture of rights to benefits) is committed;
- (b) a pension that is commuted under regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum); or

- (c) a pension that is commuted under regulation 2.J.5 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting out) Regulations 1996<sup>(57)</sup> are met,

but if any other provision of the scheme is inconsistent with this rule, this rule prevails.

(10) In this regulation—

- (a) “scheme employment”, in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of the scheme; and
- (b) references to the amount of a pension are to its amount—
  - (i) disregarding any additional pension;
  - (ii) after the subtraction of any amount exchanged under regulation 2.D.14 (general option to exchange part of pension for lump sum); and
  - (iii) before the subtraction of any amount allocated under regulation 2.D.18 (election to allocate pension).

## CHAPTER 2.E

### DEATH BENEFITS

#### *Pensions for surviving adults*

#### **Surviving adult dependants' pensions**

**2.E.1.**—(1) If an active member, a deferred member or a pensioner member dies leaving a surviving adult dependant, the surviving adult dependant is entitled to a pension that is payable for life.

(2) In this Part “surviving adult dependant”, in relation to a deceased member or former member, means the member’s or former member’s surviving spouse, civil partner or nominated partner.

(3) For the rate at which the pension referred to in paragraph (1) is payable see regulations 2.E.3 to 2.E.7 and, in any case where that pension includes additional pension, regulations 2.C.14(4) (effect of payment of additional contributions under this Chapter) and 2.C.16(3) (effect of part payment of periodical contributions).

#### **Meaning of “surviving nominated partner”**

**2.E.2.**—(1) A person is a surviving nominated partner in relation to a member for the purposes of this Part if—

- (a) the person and the member jointly made and signed a declaration in such form as the Scottish Ministers require that remains effective at the member’s death; and
- (b) the person satisfies the Scottish Ministers that for a continuous period of 2 years ending with the member’s death—
  - (i) the person and the member were living together in an exclusive relationship as if they were husband and wife or civil partners;
  - (ii) the person and the member were not prevented from marrying or forming a civil partnership; and
  - (iii) the person was financially dependent on the member or the person and the member were financially interdependent.

(2) A declaration for the purposes of paragraph (1)(a) ceases to have effect if—

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<sup>(57)</sup> S.I. 1996/1172.

- (a) it is revoked by the member or other person by a signed notice in writing to the Scottish Ministers in such form as the Scottish Ministers may require or is willing to accept;
- (b) the member makes a further declaration for the purpose of paragraph (1)(a); or
- (c) the person or the member marries or forms a civil partnership.

#### **Amount of pensions under regulation 2.E.1: active members**

**2.E.3.—**(1) In the case of an active member, for the period of 6 months beginning with the day after the member's death ("the initial period") the rate of the pension payable under regulation 2.E.1(1)(a) is equal to the rate of the member's pensionable pay at the time of death if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph.

(2) Subject to paragraph (3), after the initial period, if the member dies with 2 or more years of qualifying service, the annual amount of the pension payable under regulation 2.E.1—

- (a) if the member has not reached the age of 65, is equal to 37.5 per cent of the upper tier ill health pension under regulation 2.D.8 to which the member would have been entitled if on the date of death the member had become entitled to such a pension; and
- (b) if the member has reached the age of 65, is equal to 37.5 per cent of the pension under regulation 2.D.1 (normal retirement pensions) to which the member would have been entitled if on the date of death the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count.

(3) After the initial period, if the member dies with less than 2 years of qualifying service but after reaching the age of 65, the annual amount of the pension payable under regulation 2.E.1 is equal to 37.5 per cent of the pension to which the member would have been entitled (disregarding any additional pension) if on the date of death the member had become entitled to a pension under regulation 2.D.1 (normal retirement pensions) in respect of any period of pensionable service that the member is entitled to count.

(4) After the initial period, if—

- (a) the member dies with less than 2 year's qualifying service and before reaching the age of 65; and
- (b) the surviving adult has a guaranteed minimum under section 17 (minimum pensions for widows and widowers) of the 1993 Act in relation to benefits in respect of the deceased member under the scheme,

the annual amount of the pension payable under regulation 2.E.1 is equal to that guaranteed minimum, unless paragraph (5) applies.

(5) This paragraph applies if the Scottish Ministers' liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 55(2) (payment of state scheme premiums on termination of certified status) of the 1993 Act.

(6) This regulation is subject to regulation 2.E.7 (re-employed pensioners: adults survivor pensions in initial period).

#### **Amount of pensions under regulation 2.E.1: pensioner members**

**2.E.4.—**(1) In the case of a pensioner member, for the initial period the rate of the pension payable under regulation 2.E.1 is equal to the rate of the member's pension in payment at the time of death if that amount is greater than the sum of—

- (a) the amount of the pension payable to the surviving adult dependant under this Chapter apart from this paragraph; and

(b) the amount of the children's pensions otherwise payable under this Part.

(2) At any time when the rate is not the rate mentioned in paragraph (1), the rate of the surviving adult dependant's pension in the case of the death of a pensioner member is equal to 37.5 per cent of the pension to which the member was entitled on the date of death (disregarding any additional pension).

(3) For the purposes of paragraph (1)–

(a) any reduction in the rate of the pension under Chapter 2.H (abatement); and

(b) if the member was in receipt of a pension payable under regulation 2.D.4 (early payment of pensions with actuarial reduction), any reduction made under that regulation by reason of the payment of the pension before the age of 65,

is ignored.

(4) In this regulation “the initial period” means–

(a) if the member leaves one or more dependent children who are dependent on the surviving adult dependant, the period of 6 months beginning with the day after the member's death; and

(b) otherwise the period of 3 months beginning with that day.

(5) For the purposes of paragraph (4) a child born after the member's death is treated as having been born before it.

(6) If a member who has had an upper tier ill health retirement pension under regulation 2.D.8 (early retirement on ill health (active members) replaced by a lower tier ill health retirement pension (by virtue of regulation 2.G.4(2) (effect of re-employment on upper tier ill health pensions))–

(a) is in further NHS employment and dies before the end of the initial period (within the meaning of regulation 2.G.4(6)(c) and in accordance with regulation 2.G.4(2)); or

(b) is in further employment that is not NHS employment and dies within a period of one year beginning with the day on which that further employment ceased to be an “excluded employment” (within the meaning of regulation 2.G.4.(6)(a)),

the member's pension referred to in paragraph (1) means that member's original upper tier ill health pension.

(7) This regulation is subject to regulation 2.E.7 (re-employed pensioners: adult survivor pensions in initial period).

(8) For the purposes of paragraphs (1) and (2), any reduction to the member's pension under regulation 2.D.14 (general option to exchange part of pension for lump sum) will be ignored, except any reductions for the purposes of paragraph (1) where the benefits under this regulation form part of benefits payable under regulation 2.E.7.

### **Amount of pensions under regulation 2.E.1: deferred members**

**2.E.5.**—(1) In the case of a deferred member–

(a) who left pensionable service less than 12 months before the date of death; and

(b) whose surviving adult dependant would have been the member's surviving adult dependant if the member had died on the member's last day of pensionable service,

the rate of the pension payable under regulation 2.E.1 is equal to 37.5 per cent of the upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members) to which the member would have been entitled if on the date the member's pensionable service ceased the member had become entitled to such a pension under regulation 2.D.8 (but disregarding any additional pension).

(2) In the case of any other deferred member, whose surviving adult dependent would have been the member's surviving adult dependent if the member had died on the last day of the member's pensionable service, the rate of the pension payable under regulation 2.E.1 is equal to 37.5 per cent of the pension under regulation 2.D.1 (normal retirement pensions) in respect of any period of pensionable service to which the member would have been entitled if on the date of death the member had become entitled to such a pension.

### **Recent leavers**

#### **2.E.6.—(1) If—**

- (a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the recent leaver under the scheme; and
- (b) the recent leaver has died before reaching the age of 65,

the surviving spouse or civil partner is entitled to a pension that is payable for life of an amount equal to that person's guaranteed minimum pension (disregarding any additional pension), unless paragraph (2) applies.

(2) This paragraph applies if the Scottish Ministers' liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act.

#### **(3) In this Part “recent leaver” means a person—**

- (a) who left pensionable service less than 12 months before the date of death;
- (b) who is not a deferred member or a pensioner member because of rights resulting from that employment; and
- (c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

### **Re-employed pensioners: adult survivor pensions in initial period**

**2.E.7.—(1)** This regulation applies if, apart from this regulation, both regulations 2.E.3(1) and 2.E.4(1) would apply on the death of a member.

(2) Where this regulation applies, the rate of pension payable by virtue of regulations 2.E.3(1) and 2.E.4(1) during the initial period (as defined in the respective regulations) is instead the rate provided in paragraph (3).

(3) Subject to paragraph (4), for the relevant initial period the rate of the pension payable under regulation 2.E.1 is equal to the sum of—

- (a) the member's pensionable pay at the time of death; and
- (b) the member's pension payable at that time after taking account of any reduction in the rate of the pension under Chapter 2.H (abatements).

#### **(4) Paragraph (3)(a) does not apply if—**

- (a) the rate of the pension payable to the surviving adult in respect of later service; and
- (b) any children's pension that would otherwise be payable in respect of later service under this Part,

would be greater.

## *Pensions for dependent children*

### **Surviving children's pensions**

**2.E.8.**—(1) If a member or a recent leaver dies leaving one or more dependent children, a pension is payable in respect of them.

(2) This is subject to paragraphs (7) to (9).

(3) If a dependent child ceases to be a dependent child after the date of death, the pension ceases to be payable in respect of that child.

(4) If a dependent child is born after the date of death, the same pension is payable in respect of the child as if the child had been born on the date of death.

(5) If a member or a recent leaver dies leaving 2 or more dependent children, they are entitled to such shares of the pension as the Scottish Ministers may from time to time decide.

(6) An amount payable under this regulation in respect of a dependent child is payable to the dependent child or, if the Scottish Ministers so decide, to another person for the dependent child's benefit.

(7) No pension is payable in respect of any dependent children who on the deceased's death are dependant on an adult who is entitled to a surviving adult's pension whilst that pension is payable at the rate mentioned in regulation 2.E.4(1) or 2.E.7(3)(b), except so much of that pension as is additional pension.

(8) If a dependent child is incapable of earning a living because of physical or mental infirmity for any period and the child is maintained out of money provided by Parliament in a hospital or other institution for a period exceeding one month, no pension is payable in respect of the child for any part of that period after the first month.

(9) If, apart from this paragraph, a pension would be payable in respect of any person as a dependent child of 3 or more persons who were deceased members or recent leavers—

(a) a pension is only payable in respect of 2 of them; and

(b) the amount payable is equal to the sum of the 2 highest pensions.

(10) For the rate at which the pension referred to in paragraph (1) is payable, see regulations 2.E.10 to 2.E.15 and, in any case where that pension includes additional pension, regulations 2.C.14(4) (effect of payment of additional contributions under this Chapter) and 2.C.16(3) (effect of part payment of periodical contributions).

### **Meaning of “dependent child”**

**2.E.9.**—(1) In this Part “dependent child”, in relation to a deceased member or recent leaver, means a person who—

(a) meets the relationship condition (see paragraph (2));

(b) either—

(i) has not reached the age of 23; or

(ii) in the opinion of the scheme administrator was financially dependent on the deceased at the date of death because of physical or mental infirmity and remains so;

(c) was born—

(i) whilst the deceased was an active member; or

(ii) within one year after the deceased ceased to be an active member;

(d) in the case of a person within sub-paragraph (c)(i), was dependent on the deceased—



- (i) at the date of death; and
  - (ii) if the deceased died after ceasing to be an active member, when the deceased ceased to be an active member; and
- (e) in the case of a person within sub-paragraph (c)(ii)–
- (i) was dependent on the deceased both at birth and at the deceased’s death; or
  - (ii) if the person was born after the deceased’s death, would have been dependent on the deceased had the deceased not died before the person’s birth.
- (2) A person meets the relationship condition if the person is–
- (a) a natural child or natural grandchild of the deceased;
  - (b) an adopted child of the deceased who was adopted whilst the deceased was an active member;
  - (c) a step-child of the deceased whose natural or adoptive parent is the deceased’s surviving spouse or civil partner from a marriage entered into, or a civil partnership formed, whilst the deceased was an active member;
  - (d) in a case where the deceased left a surviving nominated partner with whom the deceased was living as mentioned in regulation 2.E.2(1)(b)(i) when the deceased ceased to be an active member, a person whose natural or adoptive parent is the deceased’s surviving nominated partner;
  - (e) a brother or sister, or a child of a brother or sister, of the member or the member’s spouse or civil partner or nominated partner;
  - (f) a half-brother or half-sister, or a child of a half-brother or half-sister, of the member or the member’s spouse or civil partner or nominated partner;
  - (g) a person whom, in the opinion of the scheme administrator, the deceased intended when the deceased ceased to be an active member to adopt; or
  - (h) a person who had been dependent on the deceased for 2 years or (if less) half the person’s life when the deceased ceased to be an active member.

#### **Amount of children’s pension under regulation 2.E.8: deceased active members**

**2.E.10.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving children’s pensions) if at the date of death the deceased was an active member of the scheme who was not also a pensioner member.

(2) Subject to paragraphs (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension” means–

$$0.75 \times \frac{RP}{60} \times \frac{LRS}{365}$$

where–

RP is the deceased’s reckonable pay; and

LRS is the length of the deceased’s relevant service, expressed in days.

(4) For this purpose “relevant service” means the pensionable service that the deceased was entitled to count on the date of death, increased by the enhancement period if any that would have applied for the purposes of regulation 2.D.8(5) if the deceased had become entitled to an upper tier ill health pension on the date of death.

(5) In this regulation “the appropriate fraction” means–

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 2.E.1—
    - (i) one-quarter if there is only one dependent child; and
    - (ii) one-half if there are 2 or more dependent children;
  - (b) if there is a such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 2.E.1—
    - (i) one-third if there is only one dependent child; and
    - (ii) two-thirds if there are 2 or more dependent children; and
  - (c) if there is no such parent nor spouse nor partner of such a parent—
    - (i) one-third if there is only one dependent child; and
    - (ii) two-thirds if there are 2 or more dependent children.
- (6) If—
- (a) a surviving adult dependant's pension is payable under regulation 2.E.1; and
  - (b) there is a dependent child who is not dependent on the person entitled to that pension,
- the rate of the pension payable in respect of that child for the first 3 months after the deceased's death is equal to the rate of the deceased's pensionable pay at the date of death.

(7) In a case within paragraph (5)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the rate of the member's pensionable pay at the date of death.

#### **Amount of children's pension under regulation 2.E.8: deceased pensioner members**

**2.E.11.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving children's pensions) if at the date of death the deceased was a pensioner member of the scheme who was not also an active member.

(2) Subject to paragraphs (5), (6) and (7), that amount is the appropriate fraction of the basic death pension.

- (3) In this regulation "the basic death pension" means the greater of—
- (a) 75 per cent of the deceased's annual pension (disregarding any additional pension); and
  - (b) 75 per cent of the annual pension to which the deceased would have been entitled if the deceased had been entitled to count 10 years' pensionable service (disregarding any additional pension).
- (4) In this regulation "the appropriate fraction" means—
- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 2.E.1—
    - (i) one-quarter if there is only one dependent child; and
    - (ii) one-half if there are 2 or more dependent children;
  - (b) if there is such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 2.E.1—
    - (i) one-third if there is only one dependent child; and
    - (ii) two-thirds if there are 2 or more dependent children; and
  - (c) if there is no such parent or spouse or partner of a parent—

- (i) one-third if there is only one dependent child; and
- (ii) two-thirds if there are 2 or more dependent children.

(5) If–

- (a) a surviving adult dependant’s pension is payable under regulation 2.E.1; and
- (b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension in respect of that child for the first 3 months after the deceased’s death is equal to the rate of the member’s pension at the date of death (disregarding any additional pension).

(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the rate of the member’s pension at the date of death (disregarding any reduction made under Chapter 2.H (abatement) and any additional pension).

(7) If the deceased member’s pension was payable under regulation 2.D.4 (early payment of pensions with actuarial reduction), the reference in paragraph (3)(a) and (b) to the member’s pension is a reference to the amount that the member’s pension would have been if it had been calculated without the reduction mentioned in paragraph (2)(b) of that regulation.

(8) For the purposes of paragraphs (3), (5) and (6) any reduction to the member’s pension under regulation 2.D.14 (general option to exchange part of pension for lump sum) will be ignored, except any reduction for the purposes of paragraph (3) where the benefits under this regulation form part of benefits payable under regulation 2.E.15.

#### **Amount of children’s pension under regulation 2.E.8: deceased deferred members**

**2.E.12.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving children’s pensions) if at the date of death the deceased was a deferred member of the scheme who was not also an active member or a pensioner member.

(2) That amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension”–

- (a) if the deceased died within 12 months after ceasing to be an active member, means the amount that would be the basic death pension for the purposes of regulation 2.E.10 if the deceased had died on the day of so ceasing (disregarding any additional pension); and

(b) otherwise, means the greater of–

- (i) 75 per cent of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 2.D.1 (normal retirement pensions) on the date of death (disregarding any additional pension); and
- (ii) 75 per cent of the pension to which the deceased would have been entitled if the deceased had become so entitled and the pension had been calculated on the assumption that the member was entitled to 10 years’ pensionable service (disregarding any additional pension).

(4) In this regulation “the appropriate fraction” means–

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult’s pension is payable–

- (i) one-quarter if there is only one dependent child; and
- (ii) one-half if there are 2 or more dependent children; and

(b) otherwise–

- (i) one-third if there is only one dependent child; and

- (ii) two-thirds if there are 2 or more dependent children.

**Amount of children’s pension under regulation 2.E.8: recent leavers**

**2.E.13.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving children’s pensions) if at the date of death the deceased was a recent leaver (within the meaning of regulation 2.E.6.(3)).

(2) That amount is the appropriate fraction of the basic death pension.

(3) In this regulation—

(a) “the basic death pension” means 75 per cent of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 2.D.1 on the date of death and the pension had been calculated on the assumption that the member was entitled to 10 years’ pensionable service (disregarding any additional pension); and

(b) “the appropriate fraction” means—

(i) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult’s pension is payable—

(aa) one-quarter if there is only one dependent child; and

(bb) one-half if there are 2 or more dependent children; and

(ii) otherwise—

(aa) one third if there is only one dependent child; and

(bb) two thirds if there are 2 or more dependent children.

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

**2.E.14.**—(1) This regulation applies if—

(a) a member dies leaving a dependent child or children;

(b) there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children; and

(c) the dependent child or children are not being maintained by that surviving parent, spouse or partner.

(2) The Scottish Ministers may increase the amount of the pension that would otherwise be payable under this Chapter in respect of the dependent child or children.

(3) The increased amount may not exceed the amount that would have been payable under this Chapter if there had been no such surviving parent or spouse or partner of a parent.

**Amount of children’s pension under regulation 2.E.8: re-employed pensioners**

**2.E.15.**—(1) This regulation applies for determining the annual amount of a pension payable under regulation 2.E.8(1) (surviving children’s pensions) if at the date of death the deceased was an active member who was also a pensioner member of the scheme.

(2) If there is no surviving adult dependant, the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the sum of—

(a) the rate of the deceased’s pensionable pay at the date of death; and

(b) the rate of the pension being received by the deceased at the date of death (after taking account of any abatement under Chapter 2.H).

(3) Subject to paragraph (5), except where a pension is payable at the rate mentioned in paragraph (2), the pension in respect of the member's later service shall be paid as the appropriate fraction of 75 per cent of the rate of pension described in—

- (a) regulation 2.D.8(5) (early retirement on ill health (active members)) if the deceased has not reached the age of 65 on the date of death; or
- (b) regulation 2.D.1 (normal retirement pensions) if the deceased has reached the age of 65 on the date of death.

(4) In this regulation “appropriate fraction” has the meaning given in regulation 2.E.10(5).

(5) If any dependent child was a dependent child both at the time when the pensionable service in respect of which the pension is payable ceased and at the date of death, the annual amount of the pension in respect of the dependent child or children is the sum of—

- (a) the annual amount that would be payable in respect of the child under regulation 2.E.10 as a result of the member dying whilst an active member if that regulation applied to members who are also pensioner members (disregarding the pensionable service in respect of which the pension is payable (“the pension service”) and any additional pension); and
- (b) the annual amount that would be payable in respect of the child under regulation 2.E.11 as a result of the member dying whilst a pensioner member if that regulation applied to members who are also active members (having regard only to the pension service and disregarding any additional pension).

(6) If, apart from this paragraph, the sum of—

- (a) the relevant service (as defined in regulation 2.E.10(4)) for the purposes of the calculation of the annual amount referred to in paragraph (5)(a); and
- (b) the pension service,

would be less than 10 years' pensionable service, the deceased's relevant service for the purposes of that calculation is increased by the length of the shortfall.

### *Lump sum death benefits*

#### **Lump sum benefits on death: introduction**

**2.E.16.**—(1) If a member, a recent leaver or a deferred member dies before reaching the age of 75, a lump sum is payable in accordance with this Chapter.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) This regulation does not apply if—

- (a) the member is—
  - (i) a pensioner member; or
  - (ii) a pension credit member who dies after any benefits attributable to the pension credit have become payable; and
- (b) the death takes place more than 5 years after the member's pension becomes payable.

#### **Amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)**

**2.E.17.**—(1) The lump sum payable on the death of an active member, who is not also a deferred member or a pensioner member, is an amount equal to twice the member's reckonable pay.

(2) The lump sum payable on the death of a pensioner member, who is not also an active member or a deferred member, is, in respect of each pension to which the member is entitled, the lesser of—

- (a) an amount equal to 5 times the annual rate of the pension (other than any additional pension), less the amount of the pension payments already made to the member; and
  - (b) an amount equal to twice the member's reckonable pay by reference to which the pension was calculated, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum).
- (3) The lump sum payable on the death of a deferred member, who is not an active member or a pensioner member, is an amount equal to the member's deferred annual pension, multiplied by 2.25.
- (4) The lump sum payable on the death of a recent leaver is an amount equal to the deferred annual pension to which the person would have been entitled if the person were entitled to such a pension calculated by reference to the pensionable service the recent leaver was entitled to count in the service that has ceased, multiplied by 2.25.
- (5) References in this regulation to a member's deferred annual pension are to the annual pension, in respect of any period of pensionable service, to which the member would have been entitled under regulation 2.D.1 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).
- (6) If a pensioner member exercised the option under regulation 2.D.14, the reference in paragraph (2)(a) to the annual rate of the member's pension is to the pension payable after the exercise of that option.
- (7) If a pensioner member exercised the option under regulation 2.D.18 (election to allocate pension), the reference in paragraph (2)(a) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.
- (8) For the purposes of this regulation, the fact that a person—
- (a) is an active member in service in an employment in respect of which the member has exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55);
  - (b) is a deferred member as a result of service in an employment in respect of which the member has exercised that option; or
  - (c) is a pensioner member by virtue of being entitled to a pension under that regulation,
- is ignored.

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

- 2.E.18.**—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—
- (a) was an active member otherwise than in service in an employment in respect of which the member had exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55); and
  - (b) was also a pensioner member.
- (2) The lump sum is an amount equal to the sum of—
- (a) 5 times the annual rate of the pension—
    - (i) payable under regulation 2.D.8(4) (lower tier ill health pension), if the deceased had not reached the age of 65 on the date of death; or
    - (ii) payable under regulation 2.D.1 (normal retirement pensions), if the deceased had reached the age of 65 on the date of death,
- to which the member would have been entitled on the date of death; and

- (b) in respect of each pension to which the person has been entitled for less than 5 years, the lesser of—
- (i) 5 times the annual rate of the pension payable after exercising any option under regulation 2.D.14 (general option to exchange part of pension for lump sum), less the amount of the pension payments already made to the member; and
  - (ii) an amount equal to twice the member’s reckonable pay by reference to which the pension was calculated, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum).

(3) If the pensioner member exercised the option under regulation 2.D.18 (election to allocate pension), the reference in paragraph (2)(b) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.

**Amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5**

**2.E.19.**—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) is an active member in service in an employment in respect of which the member has exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55); and
  - (b) is a pensioner member by virtue of being entitled to a pension under that regulation.
- (2) The lump sum is an amount equal to the sum of—
- (a) twice the appropriate fraction of the member’s final pensionable pay in that employment at the date of death; and
  - (b) if the member had been entitled to any pensions under regulation 2.D.5 for less than 5 years, the lesser of—
    - (i) the total of the guarantee amounts for each of those pensions (see paragraph (3)); and
    - (ii) the aggregate lump sum cap (see paragraph (4)).

(3) The guarantee amount for a pension under regulation 2.D.5 is 5 times the annual rate of the pension at the date of death, less the amount of the pension payments already made to the member in respect of the pension.

(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the reckonable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation 2.D.5 was calculated, less the total of any lump sums paid to the member in exchange for pensions under regulation 2.D.5 as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum).

- (5) In this regulation “the appropriate fraction” means—

$$\frac{DPS}{TDPS}$$

where—

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

TDPS is the aggregate of DPS and the total number of days of pensionable service (at the option day or the last such option day if the option has been exercised more than once) which forms part of the specified percentage of pensionable service.

#### **Amount of lump sum: pension credit members**

**2.E.20.**—(1) The lump sum payable on the death of a pension credit member who dies before any benefits derived from the member’s pension credit have become payable is an amount equal to the amount of the annual pension to which the member would have become entitled under regulation 2.D.2 (pension credit members) if the member had reached the age of 65 on the date of death, multiplied by 2.25.

(2) The lump sum payable on the death of a pension credit member who dies after a pension under that regulation has become payable is equal to the lower of—

(a) the annual amounts of the pension that would have been payable to the member during so much of the period of 5 years beginning with the date on which the pension became payable as falls after the date of death; and

(b)  $2RP - CLS$

where—

RP is the amount as at the valuation day of the reckonable pay of the debit member from whose rights the pension credit member’s pension credit is derived; and

CLS is the amount of the lump sum (if any) paid to the pension credit member as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 2.D.2.

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

(a) the annual amount of the pension as at the beginning date for that pension; and

(b) the increase (if any) in that annual amount under the Pensions (Increase) Act 1971 payable as at the date of death.

(4) In this regulation—

“valuation day” means the day referred to in section 29(7) (the pension and annuity requirements) of the 1999 Act; and

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

#### **Payment of lump sums on death**

**2.E.21.**—(1) A lump sum payable under regulation 2.E.16 (lump sum benefits on death: introduction) must be paid in accordance with this regulation.

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

(3) A member may give notice to the Scottish Ministers—

(a) specifying—

(i) the member’s personal representatives;

(ii) one or more other individuals; or

(iii) one incorporated or unincorporated body,

to whom the lump sum is to be paid; and



(b) where 2 or more individuals are specified, the percentage of the payment payable to each of them.

(4) If the member—

- (a) has given notice under paragraph (3) specifying a person; and
- (b) has not revoked that notice,

the lump sum (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person, unless paragraph (5) or (7) applies.

(5) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made; or
- (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(6) If the member—

- (a) leaves a surviving adult dependant; and
- (b) has not given notice under paragraph (3) or has revoked any notice so given,

the lump sum may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum (or a specified percentage of the lump sum) would otherwise be payable has been convicted of an offence specified in regulation 2.J.7(2) (forfeiture of rights to benefit) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(8) A notice under paragraph (3)—

- (a) must be given in writing; and
- (b) may be revoked at any time by a further notice in writing.

(9) The Scottish Ministers may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed—

- (a) £5,000; or
- (b) any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965<sup>(58)</sup> as the amount to be treated as substituted for references to £500 in section 1 of that Act.

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

**2.E.22.**—(1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is treated for the purposes of the 2004 Act as a pension protection lump sum death benefit if the member has given the scheme administrator a statement in writing that any such lump sum is to be treated as such a benefit.

(2) In this regulation "pensioner's lump sum" means—

- (a) a lump sum payable under regulation 2.E.16 to which regulation 2.E.17(2) applies; or
- (b) so much of a lump sum payable under regulation 2.E.16 as is calculated under regulation 2.E.18(2).

(3) Paragraph (4) applies if the person who is the scheme administrator for the purposes of section 206 of the 2004 Act ("the administrator") is liable for tax under that section in respect of a pension protection lump sum death benefit.

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(58) 1965 c. 32.

- (4) The administrator may deduct from the lump sum the tax payable in respect of it.

*Miscellaneous and general provisions*

**Death during period of absence**

**2.E.23.**—(1) This regulation applies if a person dies during a period when the person—

- (a) is absent from work because of illness or injury;
- (b) is on ordinary maternity leave;
- (c) is on ordinary adoption leave; or
- (d) is on paternity leave or parental leave,

and the earnings used to calculate the person's pensionable pay have ceased to be paid before the person's death.

(2) Any benefits payable under this Chapter must be calculated as if the person had died in pensionable service on the day before those earnings ceased.

**Polygamous marriages**

**2.E.24.**—(1) This regulation applies if—

- (a) a member dies without leaving a surviving adult dependant; and
- (b) at the date of death the member was married to one or more persons under a law which permits polygamy.

(2) If, had the member left a surviving adult dependant, any benefit would have been payable to the surviving adult dependant as such, that benefit is payable—

- (a) if there is one such person, to that person; or
- (b) if there are 2 or more such persons, to those persons in equal shares.

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

**Dual capacity membership: death benefits**

**2.E.25.**—(1) This paragraph applies if the deceased member was—

- (a) a member of the scheme of 2 or more of the kinds specified in paragraph (2);
- (b) a pensioner member in respect of 2 or more pensions; or
- (c) a deferred member in respect of 2 or more pensions.

(2) The kinds of member are—

- (a) an active member;
- (b) a deferred member;
- (c) a pensioner member; and
- (d) a pension credit member.

(3) If paragraph (1) applies, the general rule is that—

- (a) benefits are payable in respect of the member under this Chapter as if 2 or more members of the kinds in question had died (so that 2 or more pensions or lump sums are payable in respect of the one deceased member); and
- (b) the amounts payable are determined accordingly.

(4) Paragraph (3) does not apply where specific provision to the contrary is made about a person to whom that paragraph would otherwise apply.

(5) In relation to the specific provision mentioned in paragraph (4), see, in particular—

- (a) regulation 2.E.3 (amount of pensions under regulation 2.E.1: active members);
- (b) regulation 2.E.4 (amount of pensions under regulation 2.E.1: pensioner members);
- (c) regulation 2.E.7 (re-employed pensioners: adult survivor pensions in initial period);
- (d) regulation 2.E.8 (surviving children's pensions);
- (e) regulation 2.E.15 (amount of children's pension under regulation 2.E.8: re employed pensioners);
- (f) regulation 2.E.16 (lump sum benefits on death: introduction);
- (g) regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments));
- (h) regulation 2.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5); and
- (i) Chapter 2.G (re-employment and rejoining the scheme).

(6) If a person who is a pension credit member is entitled to 2 or more pension credits—

- (a) benefits are payable in respect of the person under this Chapter as if the person were 2 or more persons, each being entitled to one of the pension credits (so that 2 or more pensions or lump sums are payable in respect of the one pension credit member); and
- (b) the amounts of those benefits are determined accordingly.

### **Guaranteed minimum pensions for surviving spouses and civil partners**

**2.E.26.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under the scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person;
- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person; and
- (c) paragraph (2) is without prejudice to the generality of this paragraph.

(2) If apart from this regulation—

- (a) no pension would be payable to the surviving spouse or civil partner under this Chapter; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Paragraph (2) does not apply to a pension that is forfeited—

- (a) as a result of a conviction for treason; or
- (b) in a case where an offence within regulation 2.J.7(2)(b) (forfeiture of rights to benefits) is committed.

## CHAPTER 2.F

### TRANSFERS

#### *Transfers out*

#### **Introduction: rights to transfer value payment**

**2.F.1.**—(1) This Chapter supplements the rights conferred by or under Chapter 4 of Part 4 of the 1993 Act (transfer values).

(2) This Chapter is without prejudice to that Chapter or Chapter 5 of that Part(**59**) (early leavers: cash transfer sums and contribution refunds).

(3) Accordingly—

- (a) a member to whom Chapter 4 of that Part applies (see section 93(1)(a) of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the member under the scheme; and
- (b) a member to whom Chapter 5 of that Part applies (see section 101AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) Subject to paragraph (5) and the other provisions of this Chapter, any other member is entitled to require such a payment as if such rights had accrued to or in respect of him or her by reference to the pensionable service the member is entitled to count under the scheme (and references in this Chapter to the member’s accrued rights or benefits are to be read accordingly).

(5) Paragraph (4) does not—

- (a) give any rights to an active member;
- (b) give any rights to a pensioner member in respect of the pension to which the member has become entitled; or
- (c) give any rights to a pension credit member in respect of rights that are directly attributable to a pension credit.

#### **Applications for statements of entitlement**

**2.F.2.**—(1) A member who requires a transfer value payment to be made must apply in writing to the Scottish Ministers for a statement of the amount of the cash equivalent of the member’s accrued benefits under the scheme at the guarantee date (a “statement of entitlement”).

(2) In this Part, “the guarantee date” means any date that—

- (a) falls within the required period;
- (b) is chosen by the Scottish Ministers,
- (c) is specified in the statement of entitlement; and
- (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

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

(4) In paragraph (2) “the required period” means—

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

(b) such longer period beginning with that date (but not exceeding 6 months) as may reasonably be required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) In counting the period of 10 days referred to in paragraph 2(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

#### **Applications for transfer value payments: general**

**2.F.3.—**(1) A member who has applied for and received a statement of entitlement under regulation 2.F.2 may apply in writing to the Scottish Ministers for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation 2.F.4(2)).

(3) In this Part such a payment is referred to as “the guaranteed cash equivalent transfer value payment”.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Scottish Ministers may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Scottish Ministers, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

#### **Applications for transfer value payments: time limits**

**2.F.4.—**(1) Subject to paragraph (4), an application under regulation 2.F.3(1) must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

- (a) 6 months after that date; or
- (b) if it is earlier, the date on which the member reaches 65.

(2) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1 per cent above the base rate.

(3) Paragraph (4) applies if—

- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to the scheme; and
- (b) it appears to the Scottish Ministers that the proceedings may lead to all or part of the member's benefits being forfeited under regulation 2.J.7 (forfeiture of rights to benefit).

(4) The Scottish Ministers may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.

(5) In any case where a direction is given under regulation 2.J.7 for the forfeiture of a member's benefits, this regulation applies as if the amount specified in the statement of entitlement were reduced by an amount equal to the value of the benefits forfeited, as determined by the scheme actuary.

(6) In respect of an applicant who does not fall within regulation 2.D.1(2 (normal retirement pension)—

(a) in the case of whose application requires the guaranteed cash equivalent transfer value payment to be made to a registered occupational pension scheme or a registered personal pension scheme, an application under paragraph (1) may only be made if—

(i) the applicant became a member of that scheme not later than the end of the period of 12 months beginning with the day after the date on which the member ceased to be in the pensionable service in which the rights accrued (“the leaving date”); and

(ii) the application is made not later than—

(aa) the end of the period of 12 months beginning with the day on which the applicant became a member of that scheme; or

(bb) if the applicant became a member of that scheme on or before the leaving date, the end of the period of 12 months beginning with the day after the leaving date.

(b) in any other case, an application under paragraph (1) may only be made before the end of the period of 12 months beginning with the day after the leaving date.

### **Ways in which transfer value payments may be applied**

**2.F.5.**—(1) A member may only require the Scottish Ministers to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 (ways of taking right to cash equivalent) of the 1993 Act.

(2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 4 of Part 4 of that Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

(4) The benefits attributable to—

(a) the member's accrued rights to a guaranteed minimum pension; or

(b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 96(2) (further provisions concerning exercise of option under s.95) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights).

(5) A transfer payment may only be made to—

(a) a pension scheme that is registered under Chapter 2 of Part 4 of the 2004 Act; or

(b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) (recognised charges) of that Act).

### **Calculating amounts of transfer value payments**

**2.F.6.**—(1) Subject to paragraphs (3) and (5), the amount of the guaranteed cash equivalent transfer value payment is to be calculated in accordance with guidance and tables provided by the scheme actuary to the Scottish Ministers for use at the guarantee date.

(2) In preparing those tables the scheme actuary must use such factors as the scheme actuary considers appropriate, having regard to section 97 of the 1993 Act and regulations made under that Act (whether or not the payment is in respect of a person entitled to a guaranteed cash equivalent transfer value payment under that Act).

(3) Subject to paragraph (5), if the amount calculated in accordance with paragraph (1) is less than the member's minimum transfer value (if any), the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

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

- (a) any transfer value payments that have been made to the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under the scheme by reference to which the accrued rights subject to the transfer are calculated; and
- (b) any contributions paid by the person under Chapter 2.C (contributions) as a result of which the person is entitled to count such service.

(5) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated—

- (a) in accordance with those arrangements rather than paragraphs (1) and (3); and
- (b) by reference to the guidance and tables provided by the scheme actuary for the purposes of this paragraph that are in use on the date used for the calculation.

### **Effect of transfers-out**

**2.F.7.**—(1) If a transfer value payment is made under this Chapter in respect of a person's rights under the scheme, those rights are extinguished.

### *Transfers in*

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

**2.F.8.**—(1) Subject to the provisions of this Chapter, an active member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of him or her under any kind of scheme or arrangement to which paragraph (2) applies, other than a FSAVC, to be accepted by the scheme.

(2) This paragraph applies to—

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

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

(4) In this regulation "FSAVC" means—

- (a) a scheme which—
  - (i) immediately before 6th April 2006 was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes)(**60**); and
  - (ii) became a registered scheme for the purposes of that Act by virtue of Schedule 36 to that Act; or

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(60) Section 591 was repealed by the 2004 Act, Schedule 42, paragraph 1.

- (b) a scheme established on or after that date as a registered free-standing AVC scheme.

### **Procedure for applications under regulation 2.F.8**

#### **2.F.9.—(1) An application under regulation 2.F.8—**

- (a) must be made in writing;
- (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment;
- (c) except in the case of a member whose transfer value payment is from a corresponding health service scheme may only be made during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of the scheme;
- (d) must be made before the applicant reaches the age of 65;
- (e) if the Scottish Ministers so require, may only be made if the member has first requested a statement—
  - (i) in the case of a transfer made under the public sector transfer arrangements, of the service that the member will be entitled to count as a result of the transfer if the payment is accepted by the Scottish Ministers; and
  - (ii) in a case where the transfer is not made under those arrangements, of the service that member will be entitled so to count if the payment is so accepted by the Scottish Ministers within such period as is specified in the statement; and
- (f) must meet such other conditions as the Scottish Ministers may require.

#### **(2) A statement given to the member in pursuance of a such a request as is mentioned in paragraph (1)(e)—**

- (a) in the case mentioned in paragraph (1)(e)(i), must inform the member of the effect (if any) of regulation 2.A.12 (restriction on reckonable pay used for calculating benefits in respect of capped transferred-in service) in the member's case; and
- (b) in the case mentioned in paragraph (1)(e)(ii), must specify such amount as is calculated in accordance with guidance and tables provided by the scheme actuary for the purpose.

### **Acceptance of transfer value payments**

**2.F.10.—(1)** If an application is duly made by a member under regulation 2.F.8, the Scottish Ministers may accept the transfer value payment if such conditions as the Scottish Ministers may require are met, unless paragraph (5) applies.

#### **(2) If the Scottish Ministers accept the payment—**

- (a) the member is entitled to count the appropriate period of pensionable service for the purposes of calculating benefits payable to or in respect of the member under the scheme; and
- (b) in the case of a member any of whose service falls to be treated as capped transferred-in service, with such period as so falls counting as such service.

(3) In paragraph (2)(a) “the appropriate period” means the period calculated in accordance with regulation 2.F.11.

(4) For the meaning of “capped transferred-in service”, see regulation 2.F.12.

#### **(5) The Scottish Ministers may not accept a transfer value payment if—**

- (a) it would be applied in whole or in part in respect of the member's or the member's spouse's entitlement to a guaranteed minimum pension; and



- (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the scheme actuary for the purposes of this paragraph.
- (6) Paragraph (5) does not apply if the transfer would be paid under the public sector transfer arrangements.

### **Calculation of transferred-in pensionable service**

**2.F.11.**—(1) Subject to this regulation, the period of service that the member is entitled to count under regulation 2.F.10 as the result of a transfer is to be calculated in accordance with any guidance and tables provided by the scheme actuary for that purpose.

(2) For the purposes of the calculation under paragraph (1) the member’s annual pensionable pay is to be taken to be the amount of that pay as at the day on which the member’s pensionable service begins (“the starting day”), unless paragraph (3) applies.

(3) If the transfer payment is received by the Scottish Ministers more than 12 months after the starting day, the member’s annual pensionable pay is to be taken to be the amount of that pay as at the day on which the transfer payment is received.

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

- (a) a written statement estimating the pensionable service that the member would be entitled to count as result of the transfer was given to the member by the Scottish Ministers during the period of 3 months ending 12 months after the starting day; and
- (b) the transfer payment is received by the Scottish Ministers less than 3 months after the date of the statement.

(5) If the transfer value payment is accepted under the public sector transfer arrangements, the period of pensionable service the member is entitled to count is calculated—

- (a) in accordance with those arrangements; and
- (b) by reference to the guidance and tables provided by the scheme actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

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

- (a) the member’s employment to which that scheme applied were NHS employment in respect of which the member was a member of the scheme; and
- (b) the member’s contributions to that scheme were contributions to the scheme.

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

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972<sup>(61)</sup> and having effect in England and Wales;
- (b) a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(62)</sup>;
- (c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald)<sup>(63)</sup> applies; and
- (d) any other occupational pension scheme approved for the purposes of this regulation by the Scottish Ministers.

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<sup>(61)</sup> 1972 c. 11.

<sup>(62)</sup> S.I. 1972/1073.

<sup>(63)</sup> 1984 c. 8 (Tynwald).

### Meaning of “capped transferred-in service”

**2.F.12.**—(1) This regulation applies if—

- (a) the Scottish Ministers accept a transfer value payment in respect of a member under a transfer to which the public sector transfer arrangements apply; and
- (b) the service in respect of which the transfer is made was, or included, capped service in employment to which the scheme from which the transfer value payment is made (“the transferring scheme”) applied.

(2) For the purposes of this Part, the same proportion of the service that the member is entitled to count under regulation 2.F.10(2)(a) as the capped service bears to the whole of the service in respect of which the transfer is made is capped transferred-in service.

(3) For the purposes of paragraph (1)(b), the service in respect of which the transfer is made was capped service so far as—

- (a) in the case of service before 6th April 2006, the member was an active member of the transferring scheme whose pension under that scheme in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) (earnings cap) of the Income and Corporation Taxes Act 1988<sup>(64)</sup>; or
- (b) in the case of service on or after 6th April 2006, the member was an active member of the transferring scheme whose pension under that scheme in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum under that section was calculated for tax years ending before that date.

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

### Public sector transfer arrangements

**2.F.13.**—(1) This Chapter applies in the case of a transfer to which the public sector transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) any provision in this Chapter provides otherwise; or
- (b) the arrangements themselves make different provision.

### Bulk transfers out

**2.F.14.**—(1) This regulation applies if—

- (a) the employment of one or more active members (“the transferring employees”) is transferred without their consent to a new employer;
- (b) on that transfer the transferring employees cease to be eligible to be active members of the scheme;
- (c) after that transfer the transferring employees become active members of another occupational pension scheme (“the new employer’s scheme”);
- (d) the Scottish Ministers have agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer’s scheme, after consultation with the scheme actuary; and

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<sup>(64)</sup> 1988 c. 1. Section 590C was amended by the Finance Act 1993 (c. 34), S.I. 1993/2950, 1995/3034, 1996/2951, 1998/758 and 1999/592.

- (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) In the case of the transferring members or the transferred members the transfer value payment to be paid—
  - (a) is not calculated in accordance with regulation 2.F.6; and
  - (b) is to be such amount as the Scottish Ministers determine to be appropriate in accordance with the special terms after consulting the scheme actuary.
- (3) This Chapter has effect with such modifications as are necessary to give effect to those terms.
- (4) If the transfer is directly or indirectly attributable to an enactment, this Chapter has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.
- (5) Where a member to whom this regulation applies is also a member to whom Part 3 applies, a bulk transfer under this regulation also operates as a transfer of that member’s rights under Part 3.

### **Bulk transfers in**

**2.F.15.**—(1) This regulation applies if—

- (a) the employment of one or more persons (“the transferred employees”) is transferred without their consent to a new employer;
  - (b) on that transfer the transferred employees cease to be active members of an occupational pension scheme (“the former employer’s scheme”);
  - (c) after that transfer the transferred employees become active members of the scheme;
  - (d) the Scottish Ministers have agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer’s scheme, after consulting the scheme actuary; and
  - (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) The scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).
- (3) If the transfer is directly or indirectly attributable to an enactment, the scheme has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.

### **EU and other overseas transfers**

**2.F.16.**—(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with any scheme for the provision of retirement benefits established outside the United Kingdom.

- (2) The scheme applies in relation to the member with such modifications as the Scottish Ministers consider necessary to comply with—
- (a) the terms of those arrangements;
  - (b) any applicable provision contained in or made under any enactment; and
  - (c) the requirements to be met by a scheme registered under Chapter 2 of Part 4 of the 2004 Act.

## CHAPTER 2.G RE-EMPLOYMENT AND REJOINING THE SCHEME

### *Preliminary*

#### **Application of Chapter 2.G**

**2.G.1.**—(1) Subject to paragraphs (4) to (7), this Chapter applies to persons who—

- (a) have been active members of the scheme in respect of their service in an employment;
- (b) have ceased to be employed in that employment and have become deferred members or pensioner members of the scheme because of their rights in respect of that service;
- (c) become employed again in an employment that qualifies them to belong to the scheme; and
- (d) become active members of the scheme in respect of their service in that employment.

(2) In these regulations a member to whom this Chapter applies is referred to as a “re-employed member”.

(3) In this Chapter, in relation to any re-employed member—

- (a) the service referred to in paragraph (1)(a) is referred to as “the earlier service”; and
- (b) the service referred to in paragraph (1)(d) is referred to as “the later service”.

(4) This Chapter also applies to members who—

- (a) cease to be active members in respect of their service in an employment as the result of exercising the option under regulation 2.B.5 (opting out of the scheme); and
- (b) later become active members in that or another employment,

as it applies to members who cease to be employed in the employment in which they are active members, and paragraph (3) must be read accordingly.

(5) This Chapter does not apply if the earlier service and the later service are treated as a single continuous period of pensionable service under regulation 2.A.4(5) (pensionable service: breaks in service).

(6) Regulation 2.G.4 applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to the scheme.

(7) Regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking) applies whether or not the deferred member becomes an active member in the NHS employment in which the deferred member is re-employed.

(8) If a re-employed member ceases to be an active member again, this Chapter applies again in respect of the later service as if it were the earlier service (and so on).

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

#### **General rule: separate treatment of service etc.**

**2.G.2.**—(1) The general rule is that, in accordance with regulations 2.D.21 (dual capacity membership) and 2.E.25 (dual capacity membership: death benefits)—

- (a) the re-employed member’s pensionable service in respect of the earlier service and the later service are treated separately; and
- (b) the re-employed member’s reckonable pay in respect of the earlier service and the later service are determined separately.

- (2) This regulation is subject to the provisions mentioned in regulations 2.D.21(4) and 2.E.25(5).

### **Exception to general rule in regulation 2.G.2**

**2.G.3.**—(1) The general rule in regulation 2.G.2 does not apply if—

- (a) at the time that the member first becomes entitled to a pension under the scheme in respect of the earlier service or the later service; or
- (b) if it is earlier, at the time of the member’s death,

in the opinion of the Scottish Ministers the benefits payable to or in respect of the member would be more valuable if that general rule were disregarded.

(2) Accordingly, in a case within paragraph (1)—

- (a) the member’s pensionable service in respect of the earlier service and the later service are treated as one single continuous period;
- (b) the member’s qualifying service in respect of the earlier service and the later service are each treated as one single continuous period;
- (c) the member is not treated as a deferred member in respect of the earlier service; and
- (d) the member’s reckonable pay in respect of the later period may be determined by reference to the earlier period as well as the later period (as a result of regulation 2.A.10(8) (meaning of “reckonable pay”: general)).

(3) This regulation is subject to regulation 2.G.6.

### *Special rules about re-employment of ill health pensioners*

#### **Effect of re-employment on upper tier ill health pensions**

**2.G.4.**—(1) This regulation applies if a member who is entitled to an upper tier ill health pension under regulation 2.D.8 in respect of earlier service—

- (a) did not opt to exchange that pension for a lump sum in accordance with regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum); and
- (b) has re-entered further employment (the “further employment”).

(2) Subject to paragraphs (3) and (4), the member ceases to be entitled to the upper tier ill health pension under regulation 2.D.8 (early retirement on ill health (active members)), and becomes entitled to a lower tier ill health pension under that regulation.

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

- (a) not NHS employment; and
- (b) an excluded employment,

paragraph (2) does not apply.

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

- (a) NHS employment; and
- (b) an excluded employment,

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

(5) As regards a further employment in NHS employment—

- (a) paragraph (2) applies from the first lower tier ill health pension payment date which falls after the first anniversary of the member’s re-entry into NHS employment, whether or not

that day is part of a continuous period of further NHS employment beginning with entry into that employment; and

- (b) the member may not rejoin the scheme in respect of that employment or any other NHS employment until after the first anniversary of the member's re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.

(6) For the purposes of this regulation—

- (a) an employment is an excluded employment at any time in a tax year, in relation to a member, if the member's earnings at that time for the purposes of national insurance from the employment and any other employments are such that the lower earnings limit for that year is not exceeded;
- (b) for the purposes of paragraph (2) an employment that has been an excluded employment in a tax year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the upper tier ill health pension in which the limit described in sub paragraph (a) is first exceeded; and
- (c) "the initial period" means the period of 12 months beginning with the day on which the member first enters an employment which results in this regulation applying.

(7) A member who, before attaining the age of 65, has ceased to be entitled to an upper tier ill health pension under paragraph (2), and who—

- (a) is in further NHS employment and ceases to be employed at all during the initial period; or
- (b) is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which that further employment ceased to be an excluded employment,

may apply to the Scottish Ministers under this paragraph to become entitled to an upper tier ill health pension.

(8) An application under paragraph (7)—

- (a) where paragraph (7)(a) applies, must—
  - (i) state that the member has ceased to be employed at all;
  - (ii) be made within the initial period; and
  - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 2.D.8(3)(a); and
- (b) where paragraph (7)(b) applies, must—
  - (i) state that the member has ceased to be employed at all;
  - (ii) be made within a period of one year beginning with the day on which that employment ceased to be an excluded employment; and
  - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 2.D.8(3)(a).

(9) If on an application under paragraph (7) the Scottish Ministers are satisfied that the member meets the condition in regulation 2.D.8(3)(a), from the day following that on which the member's last employment ceased—

- (a) the member ceases to be entitled to the lower tier ill health pension under regulation 2.D.8; and
- (b) becomes entitled to an upper tier ill health pension under that regulation in respect of the earlier service.

(10) A member who falls within paragraph (1) must—

- (a) notify the Scottish Ministers if the member is in NHS employment at the end of the initial period;
  - (b) notify the Scottish Ministers if the member's aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded; and
  - (c) provide the Scottish Ministers or any other person specified by the Scottish Ministers with such further information as the Scottish Ministers specify concerning any further employment.
- (11) This regulation is subject to regulation 2.G.5.

### **Re-employed lower tier ill health pensioners**

**2.G.5.**—(1) This regulation applies to re-employed members who are entitled to a lower tier ill health pension under regulation 2.D.8 in respect of the earlier service.

(2) For the purposes of determining whether a member can count 45 years of pensionable service for any purpose, the earlier service and the later service are aggregated.

(3) If the re-employed member became entitled to a lower tier ill health pension for the earlier service, and on the termination of the later service the member becomes entitled to—

- (a) a lower tier ill health pension; or
- (b) an upper tier ill health pension,

under regulation 2.D.8 in respect of the later service, the re-employed member is entitled to the benefits set out in paragraph (4).

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

- (a) the member's original lower tier ill health pension in respect of his or her earlier service; and
- (b) a lower tier or, as the case may be, upper tier ill health pension in respect of the later service.

### *Special rule for members transferred out on transfer of undertaking*

### **Deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking**

**2.G.6.**—(1) This regulation applies if a re-employed member becomes entitled to a pension under regulation 2.D.1 (normal retirement pensions) or 2.D.4 (early payment of pensions with actuarial reduction) by virtue of the application of regulation 2.D.13(2)(a) (transfer of undertaking to employing authority).

(2) Regulation 2.G.3 does not apply.

(3) Subject to paragraph (4), accordingly, any benefits payable in respect of the later service are calculated without regard to pensionable service in respect of the earlier service.

(4) For the purposes of determining whether a member can count 45 years pensionable service for any purpose, the earlier service and the later service are aggregated.

## CHAPTER 2.H

### ABATEMENT

#### **Application of Chapter 2.H**

**2.H.1.**—(1) This Chapter applies if—

- (a) a person who is a pensioner member of the scheme is employed in NHS employment;
  - (b) the person's employment is not employment to which the person was transferred as a result of a transfer of an undertaking to the person's employer;
  - (c) the person's pension is a pension under—
    - (i) regulation 2.D.8 (early retirement on ill health: active members);
    - (ii) regulation 2.D.10 (early retirement on ill health: deferred members); or
    - (iii) regulation 2.D.11(1)(d)(ii) (early retirement on termination of employment by employing authority) in a case where the Scottish Ministers certified that the member's employment was terminated in the interests of the efficiency of the service in which the member was employed; and
  - (d) the person has not reached the age of 65.
- (2) In this Chapter "NHS employment" includes—
- (a) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(65)</sup>;
  - (b) employment to which regulations made under section 10 of the Superannuation Act 1972<sup>(66)</sup> and having effect in England and apply;
  - (c) employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply<sup>(67)</sup>;
  - (d) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies<sup>(68)</sup>; and
  - (e) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act.
- (3) In this Chapter, subject to paragraph (4)—
- (a) a person to whom this Chapter applies is referred to as an "employed pensioner";
  - (b) the pension to which the employed pensioner is entitled is referred to as the "old service pension";
  - (c) the employment in respect of which the pension is payable is referred to as the "the old employment"; and
  - (d) the employment in which the employed pensioner is employed is referred to as the "new employment".
- (4) This Chapter applies whether or not the person is an active member of the scheme in the new employment.
- (5) For the purposes of this Chapter, so much of any pension as is additional pension is ignored.

### Information

- 2.H.2.**—(1) A person who becomes an employed pensioner must inform—
- (a) the person's employer in the new employment; and
  - (b) any other person that the Scottish Ministers may specify,
- that the old service pension is payable.

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<sup>(65)</sup> 1967 c. 28.

<sup>(66)</sup> 1972 c. 11.

<sup>(67)</sup> S.I. 1972/1073.

<sup>(68)</sup> 1984 c. 8 (Tynwald).



(2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must inform—

- (a) the person’s employer in the other new employment; and
- (b) any other person that the Scottish Ministers may specify,

that the old service pension is payable.

### **Reduction of pension**

**2.H.3.**—(1) If the condition in paragraph (2) is met, the amount of the old service pension for any scheme year is reduced.

(2) The condition is that the employed pensioner’s relevant income for the scheme year exceeds the employed pensioner’s previous pay.

(3) The amount of the reduction under paragraph (1) is equal to that excess but cannot exceed the enhancement amount.

(4) For the meaning of “relevant income” and “enhancement amount” see regulation 2.H.4.

(5) For the meaning of “previous pay” see regulation 2.H.5.

(6) If the employed pensioner holds the new employment for only part of any scheme year, this regulation applies as if—

- (a) the reference in paragraph (2) to the employed pensioner’s relevant income were a reference to the appropriate proportion of that income; and
- (b) the reference in that paragraph to the employed pensioner’s previous pay were a reference to the appropriate proportion of that pay.

(7) In paragraph (6) “the appropriate proportion” means the same proportion as the period during which the new employment is held bears to the whole scheme year.

(8) If the member has a guaranteed minimum pension in relation to the old service pension, nothing in this regulation requires the reduction of the old service pension below the amount of the member’s guaranteed minimum pension in relation to it.

### **Meaning of “relevant income”**

**2.H.4.**—(1) The employed pensioner’s relevant income for a scheme year is the aggregate of—

- (a) the amount of pay received by the employed pensioner during that year from the new employment (assuming, in any case where the employed pensioner is not an active member of the scheme in the new employment, that the employed pensioner is such a member); and
- (b) the enhancement amount in relation to the old service pension.

(2) The enhancement amount, in relation to an old service pension, is the difference between—

- (a) the amount of that pension for that year; and
- (b) the amount that that pension would have been had it been payable under regulation 2.D.4 (early payment of pension with actuarial reduction).

(3) If the old service pension is payable under regulation 2.D.8 (early retirement on ill health (active members)) or 2.D.10 (early retirement on ill health (deferred members)) to an employed pensioner who had not reached the age of 55 at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)—

- (a) the fact that entitlement to a pension under regulation 2.D.4 depends on reaching that age is ignored; and

- (b) the employed person's actual age at the relevant time is taken into account in determining the reduction to be made under regulation 2.D.4(2).
- (4) If the old service pension is an upper tier ill health pension, for the purposes of paragraph (2) (b), only the employed pensioner's actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 2.D.4.
- (5) If the employed pensioner exercised the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.
- (6) If the employed pensioner exercised the option under regulation 2.D.18 (election to allocate pension) in relation to the old service pension, the resulting reduction in the pension is taken into account for the purposes of this regulation.
- (7) References in this regulation to the amount of a pension for any scheme year are to its amount for that year after any increases payable under the Pensions (Increase) Act 1971(a)(73) in respect of that pension, including the increases that would have been payable in respect of any amount not paid because of a reduction ignored under paragraph (5).

**Meaning of “previous pay”: general**

- 2.H.5.**—(1) For the purposes of this Chapter and subject to paragraph (3) and regulation 2.H.6, an employed pensioner's previous pay is the greater of—
- (a) the employed pensioner's reckonable pay for the purposes of the old service pension; and
  - (b) the annual rate of pay for the old employment at the time it ceased.
- (2) In this regulation “annual rate of pay” means the sum of—
- (a) the annual rate of so much of the employed pensioner's pensionable pay immediately before the old service pension became payable as consisted of—
    - (i) salary;
    - (ii) wages; or
    - (iii) other regular payments,of a fixed nature; and
  - (b) so much of any fees and other regular payments not of a fixed nature as—
    - (i) was payable to the employed pensioner during the period of 12 months ending with the day the old employment ceased; and
    - (ii) formed part of the employed pensioner's pensionable pay.
- (3) Subject to regulation 2.H.6 (members with concurrent employments), the amount to be taken as the employed pensioner's previous pay must be adjusted in each scheme year for inflation.
- (4) The reference in paragraph (3) to adjusting that amount in each scheme year for inflation is to increasing it by the same amount as that by which an annual pension equal to that amount would have been increased under the Pensions (Increase) Act 1971 at 6th April in that scheme year if—
- (a) that pension was eligible to be so increased; and
  - (b) the beginning date for that pension were the same as the beginning date for the old service pension.

(5) In this regulation “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) (meaning of “pension” and other supplementary provisions) of that Act).

#### **Meaning of “previous pay”: members with concurrent employments**

**2.H.6.**—(1) In the case of an employed pensioner who held one or more other NHS employments at the same time as the old employments, the amount to be taken as the employed pensioner’s previous pay is the sum of—

- (a) the amount of the employed pensioner’s previous pay, in accordance with regulation 2.H.5;
- (b) in respect of any of the other NHS employments which is held in the scheme year mentioned in regulation 2.H.3(2), the annual rate of pay for those employments in that scheme year; and
- (c) in respect of any of the other NHS employments which is not held in the scheme year mentioned in regulation 2.H.3(2), the pensionable pay for that employment for the period of 12 months ending with the day before the old employment ceased (or, if the employed pensioner was not a member of the scheme in that employment in that period, the amount that would have been the pensionable pay for it assuming that the employed pensioner had been such a member.

(2) The amount to be taken as the employed pensioner’s previous pay in accordance with paragraph (1) must be adjusted in each scheme year for inflation in the manner set out in regulation 2.H.(4).

#### **Application of this Chapter to part-time employment**

**2.H.7.**—(1) This regulation provides for the application of this Chapter where the old employment or the new employment is a part-time employment.

(2) The reference in regulation 2.H.5(1)(a) to the employed pensioner’s reckonable pay for the purposes of the old service pension must be taken as a reference to such amount as in the opinion of the Scottish Ministers would have been the reckonable pay for those purposes if—

- (a) the old employment had been a comparable whole-time employment; and
- (b) accordingly the member’s reckonable pay had been determined without reference to regulation 2.A.13 (meaning of “reckonable pay”: non-concurrent part-time employment) or 2.A.14 (meaning of “reckonable pay”: concurrent part-time employments).

#### **Employed pensioners with more than one pension**

**2.H.8.**—(1) This regulation provides for the application of this Chapter where a person is entitled to more than one old service pension falling within regulation 2.H.1(1)(c) in any scheme year.

(2) In regulation 2.H.3—

- (a) for paragraphs (1) to (3) substitute—

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

(2) The condition is that the employed pensioner’s relevant income for the scheme year exceeds the employed pensioner’s previous pay for all the old employments.

(3) The amount of the reduction under paragraph (1) in the case of each on the pensions is equal to the same proportion of that excess as the amount of the pension for the scheme year before the reduction bears to the sum of the pensions for that year before the reduction”.

(3) In regulation 2.H.4(1)(b) for “the old service pension” substitute “all the old service pensions”.

(4) Regulation 2.H.9 applies as if references to the old service pensions were references to all those pensions.

### **Provisional reductions and later adjustments**

**2.H.9.**—(1) If it appears to the Scottish Ministers that the condition in regulation 2.H.3(2) will be met in any scheme year in respect of the old service pension for that year, the Scottish Ministers may reduce the amount of that pension paid at any time in the scheme year.

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

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

(b) at any time during the scheme year if it appears to the Scottish Ministers that—

(i) the amount of the reduction made for the year is or may become incorrect; or

(ii) no reduction should be made.

(3) If at any time during the scheme year it so appears, the Scottish Ministers must make such adjustments, whether by altering the amount of the reduction or by repaying to the employed pensioner any amount that should not have been deducted from the pension, as appear to the Scottish Ministers to be required.

(4) If at the end of the scheme year it is apparent that—

(a) the reduction in the old service pension for the year was excessive; or

(b) no such reduction should have been made,

the Scottish Ministers must repay the amount due to the employed pensioner.

(5) If at the end of the scheme year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 2.H.3 was not made, the employed pensioner must repay the excess to the Scottish Ministers.

(6) Paragraph (5) does not affect the Scottish Ministers right to recover a payment or overpayment in any case where the Scottish Ministers consider it appropriate to do so.

## **CHAPTER 2.J**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

#### *Scheme administrator*

#### **Appointment of scheme administrator**

**2.J.1** For the purposes of this Part and of Part 4 of the 2004 Act, the scheme administrator is the Scottish Public Pensions Agency.

#### *Claims*

#### **Claims for benefits**

**2.J.2** A person claiming to be entitled to benefits under this Part must make a claim in writing to the Scottish Ministers and provide such evidence of entitlement as the Scottish Ministers may require.

*Power to extend time limits*

**Power to extend time limits**

**2.J.3** The Scottish Ministers may extend any time limit mentioned in this Part as it applies in any particular case.

*Beneficiaries who are incapable of looking after their affairs*

**Beneficiaries who are incapable of looking after their affairs**

**2.J.4.**—(1) In the case of a beneficiary who, in the opinion of the Scottish Ministers, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Scottish Ministers may—

- (a) use any amount due to the beneficiary under the scheme for the beneficiary's benefit; or
- (b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Scottish Ministers from any obligation under the scheme in respect of the amount.

*Commutation of small pensions*

**Commutation of small pensions**

**2.J.5.**—(1) The Scottish Ministers may pay any person entitled to a pension under the scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under the scheme on the person's death apart from the payment if the conditions specified in paragraph (2) are met.

(2) The conditions are that the payment complies with the following requirements (so far as they apply)—

- (a) the contracting-out requirements;
- (b) the preservation requirements;
- (c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(69)</sup>;
- (d) regulation 3(2)(b) of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(70)</sup>;
- (e) the lump sum rule (see, in particular, paragraph 7 of Schedule 29 to the 2004 Act: (trivial commutation lump sums for the purposes of Part 4 of that Act)); and
- (f) the lump sum death benefit rule (see, in particular, paragraph 20 of that Schedule (trivial commutation lump sum death benefit for the purposes of that Part)).

(3) The lump sum must be calculated by the Scottish Ministers in accordance with advice from the scheme actuary.

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

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<sup>(69)</sup> S.I. 1997/785.

<sup>(70)</sup> S.I. 2000/1054.

### *Reduction in and forfeiture of benefits*

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

**2.J.6.**—(1) If, as a result of a member's criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member's employment relationship with the member's employer, the Scottish Ministers—

- (a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss; or
- (b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.

(2) Paragraph (1) does not apply so far as the pension or other benefit—

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

(3) If the Scottish Ministers propose to exercise the power under paragraph (1), the Scottish Ministers must give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction may be made under paragraph (1) until the member's obligation to make good the loss has become enforceable—

- (a) under the order of a competent court; or
- (b) in consequence of an award of an arbiter to be appointed (failing agreement by the parties) by the sheriff, or, in England and Wales an arbitrator.

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

#### **Forfeiture of rights to benefits**

**2.J.7.**—(1) The Scottish Ministers may direct that all or part of any rights to benefits or other amounts payable to or in respect of a member under these Regulations be forfeited if—

- (a) the member is convicted of any of the offences specified in paragraph (2); and
- (b) the offence was committed before the benefit or other amount becomes payable.

(2) The offences are—

- (a) an offence in connection with employment that qualifies the member to belong to the scheme, in respect of which the Scottish Ministers have issued a forfeiture certificate; and
- (b) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to—
  - (i) a term of imprisonment of at least 10 years; or
  - (ii) 2 or more consecutive terms amounting in the aggregate to at least 10 years.

(3) In paragraph (2)(a) “forfeiture certificate” means a certificate that the Scottish Ministers are satisfied that the offence—

- (a) has been gravely injurious to the State; or
- (b) is liable to lead to serious loss of confidence in the public service.

(4) The Scottish Ministers may direct that all or part of any rights to benefits or other amounts payable in respect of a member under these Regulations be forfeited where the benefits or amounts are payable to a person to whom paragraph (5) applies who has been convicted of the murder or

culpable homicide of that member or of any other offence of which unlawful killing of that member is an element.

(5) This paragraph applies to a person who is—

- (a) the member's widow, widower, nominated partner or surviving civil partner;
- (b) a dependant of the member;
- (c) a person not falling within sub-paragraph (a) or (b) who is specified in a notice given under regulation 2.E.21(3) (payment of lump sums on death); or
- (d) a person to whom such benefits or amounts are payable under the member's will or on the member's intestacy.

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

#### *Provisions about tax*

#### **Deduction of tax**

**2.J.8.**—(1) The Scottish Ministers may deduct from any payment under the scheme any tax which is required to be paid in respect of it.

(2) Without prejudice to the generality of paragraph (1), if a person becoming entitled to a benefit under this Part—

- (a) which is a benefit crystallisation event under section 216 (benefit crystallisation events and amounts crystallised) of the 2004 Act; and
- (b) a lifetime allowance charge under section 214 (lifetime allowance charge) of that Act arises when that event occurs,

the tax charged must be paid by the scheme administrator.

(3) Paragraph (4) applies if—

- (a) a member has given the scheme administrator a statement in accordance with regulation 2.E.22 (tax treatment under the 2004 Act of lump sums payable on pensioners' death) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act; and
- (b) has not withdrawn that statement.

(4) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the scheme administrator may deduct the tax payable under section 206 of the 2004 Act (special lump sum death benefits charge) from the lump sum.

#### *Interest on delayed payments*

#### **Interest on late payment of benefits and refunds of contributions**

**2.J.9.**—(1) This regulation applies if the whole or part of an amount to which this regulation applies is not paid by the end of the period of one month beginning with the due date.

(2) This regulation applies to any amount payable by way of a pension, lump sum or refund of contributions under the scheme (other than any amount due under regulation 2.C.5 (contributions by employing authorities) or 2.C.6 (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11)) or interim award.

(3) The Scottish Ministers must pay interest on the unpaid amount to the person to whom it should have been paid unless the Scottish Ministers are satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.

(4) The interest on the unpaid amount is calculated at the base rate on a day to day basis from the due date for the amount to the date of its payment and compounded with 3 monthly rests.

(5) For the purposes of this regulation, except where paragraph (6) applies, “due date”, in relation to an unpaid amount, means—

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 2.D (members retirement benefits), the day immediately following that of the member’s retirement from pensionable employment;
- (b) in the case of an amount in respect of a pension payable on a member’s death, the day after the date of death;
- (c) in the case of an amount in respect of a lump sum under Chapter 2.E (death benefits) that is payable to the member’s personal representatives, the earlier of—
  - (i) the date on which confirmation of an executor nominate or dative was produced to the Scottish Ministers; and
  - (ii) the date on which the Scottish Ministers were satisfied that the lump sum may be paid as provided in regulation 2.E.21(9) (payment of lump sums on death);
- (d) in the case of an amount in respect of any other lump sum under that Chapter, the day after the date of the member’s death; and
- (e) in the case of an amount in respect of a refund of contributions, the day after that on which the Scottish Ministers received from the Commissioners of Her Majesty’s Revenue and Customs the information required for the purposes of calculating the amount to be subtracted under regulation 2.C.18(3) or (4) (repayment of contributions).

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

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

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

### *Determinations*

#### **Determination of questions**

**2.J.10.**—(1) Except as otherwise provided by this Part, any question arising under the scheme is to be determined by the Scottish Ministers.

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

(3) The Scottish Ministers, in relation to decisions within paragraph (4), may require a person to submit to a medical examination by a registered medical advisor selected by the Scottish Ministers



and the Scottish Ministers in making any decision must take that report into consideration together with any medical evidence submitted by the person.

(4) This paragraph applies to any decision as to a person's health or degree of physical or mental infirmity or impairment that is required for the purposes of this Part and, in particular, any such decision required for the purposes of—

- (a) regulation 2.D.8(2)(a) or (3)(a) (early retirement on ill health (active members));
- (b) regulation 2.D.9(1)(a) or (b) or (3) (provisional ill health awards);
- (c) regulation 2.D.10(1)(a) or (2)(a) (early retirement on ill health (deferred members));
- (d) regulation 2.D.19(6)(b) (procedure for allocation election under regulation 2.D.18);
- (e) regulation 2.E.9(1)(b)(ii) (meaning of “dependent child”); or
- (f) regulation 2.J.4(1) (beneficiaries who are incapable of looking after their affairs).

#### *General prohibition on unauthorised payments*

#### **General prohibition on unauthorised payments**

**2.J.11.**—(1) Nothing in these rules requires or authorises the making of any payment, which, if made, would be an unauthorised payment for the purposes of Part 4 of the 2004 Act (see section 160(5) of that Act (payments by registered pensions schemes)(**71**)).

#### *Prohibition on assignment or charging of benefits*

#### **Prohibition on assignment or charging of benefits**

**2.J.12.**—(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under the scheme is void.

(2) On the bankruptcy or sequestration of any person entitled to a benefit under the scheme, no part of the benefit may be paid to the person's trustee in bankruptcy or other person acting on behalf of the creditors, except in accordance with an order under section 310 of the Insolvency Act 1986(**72**) (income payments orders).

#### *Record keeping and contribution estimates*

#### **Employing authority record keeping and contribution estimates**

**2.J.13.**—(1) As regards a member who is a non-GP provider who derives practitioner income within the meaning of regulation 2.A.8(6) (meaning of “pensionable pay”), in respect of each financial year the member must provide the contracting Health Board or person acting on their behalf with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the returns the member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

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(71) Section 160 was amended by the Finance Act 2006 (c. 2005), Schedules 21 and 23 and the Finance Act 2007 (c. 11), Schedule 20, paragraph 5.

(72) 1986 c. 45. Section 310 was amended by the 1995 Act, Schedule 3, the 1999 Act, Schedule 2 and the Enterprise Act 2002 (c. 40), section 259 and Schedule 26.

no later than one month from the date on which the return was required to be submitted to Her Majesty's Revenue and Customs.

- (2) As regards all other members under this part, employing authorities must keep records of all—
- (a) contributions deducted in accordance with this Part; and
  - (b) contributions to the scheme made under regulation 2.C.5 (contributions by employing authorities; general),

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

- (3) In respect of each financial year, employing authorities must also provide the Scottish Ministers with the best estimate in writing that can reasonably be made of the total contributions due to the scheme under regulations 2.C.1 (contributions by members) and 2.C.5 (contributions by employing authorities: general) within 2 months of the end of each such year.