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STATUTORY RULES OF NORTHERN IRELAND

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**2008 No. 256**

**HEALTH AND PERSONAL SOCIAL SERVICES**

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

*Made - - - - 17th June 2008*

*Coming into operation 1st July 2008*

<sup>M1</sup>The Department of Health, Social Services and Public Safety makes the following Regulations in exercise of the powers conferred by Articles 12 and 14 (1) of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972 , with the consent of the Department of Finance and Personnel.

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

**Modifications etc. (not altering text)**

**C1** Regulations modified (with effect in accordance with reg. 1(4)(c) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and [Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **14**

**Marginal Citations**

**M1** [S.I.1972/1073 \(N.I. 10\)](#), as amended by [S.I. 1990/1509 \(N.I. 13\)](#), [1993 c. 49 \(N.I.\)](#) and [S.I. 2002/1555](#)

**PART 1**

**INTRODUCTORY AND GENERAL**

**CHAPTER 1**

**INTRODUCTION**

**Citation, commencement and effect**

**1.** These Regulations may be cited as the Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008 and shall come into operation on 1st July 2008 and shall have effect from 1st April 2008.

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### Application of remaining Parts

2.—(1) Part 2 provides for benefits to be payable in relation to service as an officer (as defined in that Part).

(2) Part 3 provides for benefits to be payable in relation to service as—

- (a) a practitioner, or
- (b) an OOH provider,

(both as defined in that Part).

(3) Part 4 modifies Parts 2 and 3 where a member has pensionable service under both Parts 2 and 3.

## CHAPTER 2

### SCHEME REPORTS AND ACCOUNTS

#### Actuarial reports and accounts

3.—(1) The following paragraphs apply to the Health and Social Care Pension Scheme as set out in these Regulations and the 1995 Regulations.

(2) The Department shall keep accounts of all income and expenditure of the Scheme in a form approved by the Department of Finance and Personnel.

(3) The accounts shall be open to examination by the Comptroller and Auditor General.

(4) The Scheme actuary must—

- (a) prepare an actuarial report of the scheme liabilities and benefits under these Regulations and the scheme liabilities and benefits under the provisions of the 1995 Regulations, at the 31st March 2012 and at the expiration of every period of 4 years after that date; and
- (b) send a copy of that actuarial report of the Scheme to the Department and the Department of Finance and Personnel.

[<sup>F1</sup>This is subject to paragraph (5).]

[<sup>F2</sup>(5) The actuarial report referred to in paragraph (4) shall be based on actuarial assumptions determined by the Department following the consent of the Department of Finance and Personnel.

(6) Before determining the assumptions referred to in paragraph (5) the Department may consult—

- (a) such representatives of employees and employing authorities as appear to the Department to be appropriate, and
- (b) the Scheme Actuary.]

#### Textual Amendments

- F1** Words in [reg. 3\(4\)](#) added (with effect in accordance with [reg. 1\(4\)\(b\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/420\)](#), [regs. 1\(2\)](#), **10(2)**
- F2** [Reg. 3\(5\)\(6\)](#) added (with effect in accordance with [reg. 1\(4\)\(b\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/420\)](#), [regs. 1\(2\)](#), **10(3)**

## Cost Sharing

4.—(1) The actuarial report referred to in regulation 3 (Actuarial reports and accounts) shall specify—

- (a) a recommended contribution rate (RCR), and
- (b) a projected yield of member's contributions (PYM).

(2) Where the member contribution rate or benefits provided in England and Wales by the National Health Service Pension Scheme Regulations 2008 <sup>M2</sup> have changed as a consequence of determinations made by the Secretary of State, under regulation 1.B.2 of those Regulations, the actuarial report referred to in regulation 3 shall also specify—

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

(3) Where the member contribution rate or benefits provided by the National Health Service Pension Scheme Regulations 2008 have changed as a consequence of determinations made by the Secretary of State under regulation 1.B.2 of those Regulations, the initial employers' contribution rate (IECR) shall be calculated as RCRI minus PYMI.

(4) Where the member contribution rate or benefits provided by the National Health Service Pension Scheme Regulations 2008 have not changed as a consequence of determinations made by the Secretary of State under regulation 1.B.2 of those Regulations, the initial employers' contribution rate (IECR) shall be calculated as RCR minus PYM.

(5) Subject to paragraph (6) employing authorities will pay contributions at the rate of IECR.

(6) In the event that IECR is more than one percentage point greater than or less than the rate payable by employing authorities in England and Wales under regulation 1.B.2 of the National Health Service Pension Scheme Regulations 2008 for the same period the relevant member contribution rates and employer contribution rates will be subject to review by the Department having taken advice from the Scheme actuary and the Department of Finance and Personnel.

### Marginal Citations

M2 S.I. 2008/653

## Provision of information relevant for tax purposes

5.—(1) A person who is entitled to a benefit under [<sup>F3</sup>this Section of the Scheme] must give the Department such information as will enable it to determine—

- (a) whether a lifetime allowance charge arises on the person becoming entitled to the benefit, and
- (b) if any such charge arises, the amount of the tax payable.

(2) Paragraph (1) applies whether or not the person intends to rely on having given notice under any of the provisions specified in section 256(1) of the Finance Act 2004 (enhanced lifetime allowance regulations).

(3) If a person applying for a benefit under [<sup>F4</sup>this Section of the Scheme] intends to rely on entitlement by virtue of any such notice, in addition to the information mentioned in paragraph (1) the person must give the Department the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006 <sup>M3</sup> in respect of that entitlement.

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- (4) The information that a person is required to give under this regulation must be given—
- (a) at the time the person makes a claim for a benefit, or
  - (b) within such period ending after that time as the Department specifies in writing.
- (5) If a person fails to comply with paragraph (4) (b), the Department may calculate and pay tax due in respect of the lifetime allowance charge on the basis that the whole benefit is chargeable.

#### Textual Amendments

- F3** Words in [reg. 5\(1\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), [15](#)
- F4** Words in [reg. 5\(3\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), [15](#)

#### Marginal Citations

- M3** [S.I. 2006/131](#)

## PART 2

### BENEFITS FOR OFFICERS

#### CHAPTER 1

#### INTRODUCTION

#### *General interpretation*

#### **Interpretation: general**

##### **6.—(1)** In Part I and in this Part—

[<sup>F5</sup>“2008 Section Optant” has the meaning given in regulation 136A;]

[<sup>F6</sup>“the 2011 Act” means the Finance Act 2011;]

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972 <sup>M4</sup>;

“the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993 <sup>M5</sup>;

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995 <sup>M6</sup>;

“the 1995 Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 <sup>M7</sup>;

[<sup>F5</sup>“the 1995 Section” means the section of the Health and Social Care Pension Scheme as set out in the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;]

“the 1997 Order” means the Health Services (Primary Care) (Northern Ireland) Order 1997 <sup>M8</sup>;

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999 <sup>M9</sup>;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 <sup>M10</sup>;

“the 2004 Order” means the General Medical Services Transitional and Consequential Provisions (No.2) (Northern Ireland) Order 2004 <sup>M11</sup>;

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

“active member” has the meaning given in Article 121 (1) of the 1995 Order and, except where the context otherwise requires, refers to membership of [<sup>F7</sup>this Section of] the Scheme (but see regulation 49(9));

“additional pension”, in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions made under regulations 34, 36 and 37;

“additional services” has the meaning given in regulation 137;

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

“APMS contractor” means a person—

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

“assistant medical practitioner” has the meaning given in regulation 137;

“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>M12</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 is in force, any equivalent rate determined by Treasury under that section;

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 15 of the 1993 Act (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 104;

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

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

“certification services” has the meaning given in regulation 137;

“chapter” unless otherwise specified, means a chapter in this Part;

“collaborative services” has the meaning given in regulation 137;

“commissioned services” has the meaning given in regulation 137;

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

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“contribution option period” has the meaning given in regulation 34(8);

[<sup>F8</sup>“corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Department has determined correspond to the provisions of the 1995 Regulations;

“corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Department has determined correspond to the provisions of these Regulations;]

[<sup>F9</sup>“corresponding health service scheme” means—

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972 and having effect in England, Wales and Scotland,
- (b) [<sup>F10</sup>a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), in the case of a member who entered HSC employment on or before 1st April 2012, and]
- (c) any other occupational pension scheme approved for the purposes of this regulation by the Department;]

“deferred member” has the meaning given in section 121(1) of the 1995 Order, except where the context requires otherwise, refers to membership of [<sup>F7</sup>this Section of] the Scheme (but see paragraph (2) and regulation 49(9));

“dentist performer” means a dentist who has undertaken to provide general dental services (GDS) and whose name is included in a list of dentists prepared by the Agency under regulation 4 of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993 <sup>M13</sup>;

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

“dependent child” is to be construed in accordance with regulation 75;

“dispensing services” has the meaning given in regulation 137;

[<sup>F5</sup>“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000;]

“employing authority” means—

- (a) <sup>F11</sup> ...
- (b) <sup>F11</sup> ...
- (c) <sup>F11</sup> ...
- (d) any other body which is constituted under an Order relating to health services and which the Department agrees to treat as an employing authority for the purposes of the Scheme,
- (e) an OOH provider,
- (f) an APMS contractor,
- (g) a GMS practice,
- (h) a PMS practice, and
- (i) in relation to a person who is subject to a direction made under Article 12 (5) of the Superannuation (Northern Ireland) Order 1972, and subject to such modifications to this Part as the Department may in any particular case direct, any employer of such a person whom the Department agrees to treat as an employing authority for the purposes of this Part;
- (j) [<sup>F12</sup>in relation to a person who is subject to a direction made under Article 12 (5) of the Superannuation (Northern Ireland) Order 1972, and subject to such modifications to this Part as the Department may in any particular case direct, any employer of such a person whom the Department agrees to treat as an employing authority for the purposes of this Part;

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- (k) “Regional Health and Social Care Board (RHSCB)” established under section 7(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (l) “Regional Business Services Organisation (RBSO)” established under section 14(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (m) “Patient and Client Council (PCC)” established under section 16(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (n) “Regional Agency for Public Health and Social Wellbeing (RAPHSW)” established under section 12(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009]

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

"enhanced services" has the meaning given in regulation 137;

"essential services" has the meaning given in regulation 137;

"GDS arrangements" means arrangements for the provision of general dental services under Article 61 of the 1972 Order;

"GDS provider" is a person who is a party to GDS arrangements;

"GMS contract" means a contract under Articles 57 and 57A of the 1972 Order;

"GMS practice" means—

- (a) a registered medical practitioner [<sup>F13</sup>who is a principal medical practitioner] ,
- (b) two or more [<sup>F13</sup>such] individuals practising in partnership, or
- (c) a company limited by shares,

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

[<sup>F14</sup>“GOS arrangements” has the meaning given in regulation 13 of the General Ophthalmic Services Regulations (Northern Ireland) 2007;]

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

- (a) under a GMS contract or an APMS contract,
- (b) on behalf of an OOH provider, or
- (c) under a contract of service or for services with a Health and Social Services Board which relates to arrangements under which it provides primary medical services under Article 56 of the 1972 Order;

[<sup>F14</sup>“GP provider” has the meaning given in regulation 137;]

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

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

"HSC employment" means employment with an employing authority;

<sup>F15</sup>  
...

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"the guarantee date" has the meaning given in regulation 94(2);

"guaranteed cash equivalent transfer value payment" has the meaning given in regulation 95(3);

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

[<sup>F16</sup>"host Board", in respect of a person who is a [<sup>F17</sup>principal medical practitioner] or non-GP provider who is—

- (a) a partner in a partnership—
  - (i) that is a GMS practice, or
  - (ii) that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
- (b) a shareholder in a company limited by shares that is a GMS practice or an APMS contractor that has entered into an APMS contract for the provision of primary medical services;
- (c) an individual who is a GMS practice or an APMS contractor,

[<sup>F18</sup>means the Regional Health and Social Care Board (RHSCB) and such a person shall be deemed to be employed by the RHSCB for the purposes of this Part, except where regulation 31(7) or (8) applies;

(d) in respect of a dentist performer means the RHSCB.]]

"lifetime allowance", in relation to a person, has the meaning given in section 218 of the Finance Act 2004<sup>M14</sup>;

"locum practitioner" has the meaning given in regulation 137;

"lower earnings limit" must be read in accordance with section 5 of the Social Security Contributions and Benefits Act (Northern Ireland) 1992<sup>M15</sup>;

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

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

"member" , except where the context otherwise requires, means an active member, [<sup>F19</sup>non-contributing member,] a deferred member, a pensioner member or a pension credit member;

"medical performers list" means a list of registered medical practitioners prepared and published in accordance with the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004<sup>M16</sup>;

[<sup>F20</sup>" non-contributing member" means a member who—

- (a) is under the age of 75 and in HSC employment;
- (b) is no longer required to make contributions to [<sup>F7</sup>this Section of] the Scheme in accordance with regulation 27(1); but
- (c) will be entitled to a pension under these Regulations—
  - (i) on ceasing to be employed in HSC employment and making a claim for the pension, or
  - (ii) upon reaching age 75;]

"non-GP provider" means—

- (a) a partner in a partnership that is a GMS practice who is not a GP provider and who demonstrates to the satisfaction of the Department that non-GP provider assists in the provision of health and personal social services provided by that practice;



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

"occupational pension scheme" means an occupational pension scheme within the meaning of section 1 of the 1993 Act which—

- (a) in the case of such a scheme established on, or after, the 6th April 2006 is a registered pension scheme for the purposes of the Finance Act 2004 and which the Department agrees to recognise as a transferring scheme for the purposes of Chapter 6;
- (b) in the case of such a scheme established before that date, was—
  - (i) approved by the Commissioners for Her Majesty's Revenue and Customs for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988<sup>M17</sup>(retirement benefits schemes) or whose application for approval under that Chapter was under consideration,
  - (ii) a statutory scheme as defined in section 612(1) of the Income and Corporation Taxes Act 1988 (interpretation), or
  - (iii) a scheme to which section 608 of the Income and Corporation Taxes Act 1988 applied (superannuation funds approved before 6th April 1980),  
and on 6th April 2006 became a registered pension scheme for the purposes of the Finance Act 2004 ;

"officer" means a person (other than a GP performer) employed by an employing authority and includes a GP Registrar;

"OOH provider" has the meaning given in regulation 20;

[<sup>F21</sup>"OOH services" means services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice or APMS contractor to patients to whom the practice or contractor is required by its GMS contract or APMS contract to provide essential services, would be or would be similar to essential services]

[<sup>F14c</sup>"ophthalmic provider" means a registered medical practitioner who is a principal medical practitioner who is included in an ophthalmic provider list prepared and kept by the Regional

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Business Services Organisation (RBSO) pursuant to regulation 8(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007 and is a party to GOS arrangements;]

"opting-out" and related expressions are to be construed in accordance with regulation 25;

"pay period" means—

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

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

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

"pensionable pay" has the meaning given in regulation 13 (read with regulation 14);

"pensionable service" has the meaning given in regulations 7 and 8 (read with regulation 9);

"pensioner member" has the meaning given in Article 121(1) of the 1995 Order and, except where the context otherwise requires, refers to membership of [<sup>F7</sup>this Section of] the Scheme (but see paragraphs (2) and (3) and regulation 49(9));

"pension credit" means a credit under Article 26 of the 1999 Order and includes a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999<sup>M18</sup>;

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

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

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

[<sup>F5</sup>"pension debit member" means a member of this Section of the Scheme whose benefits, or future benefits, under this Scheme have been reduced under Article 28 of the Welfare Reform and Pensions (Northern Ireland) Order 1999 (Reduction under pension sharing order following divorce or nullity of marriage), whether before or after the member became a member of this Section of the Scheme;]

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

"personal pension scheme" means a personal pension scheme which—

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

"practice staff" means a person who—

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

"practitioner" means—

- (a) a registered medical practitioner who—
  - (i) is not a GP Registrar, and
  - (ii) is a locum practitioner, a GP provider or a GP performer, or
- (b) a dentist performer; <sup>F22</sup>or
- (c) an ophthalmic provider]

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

"public sector transfer arrangements" means arrangements approved by the Department as providing reciprocal arrangements for the payment and receipt of transfer values between <sup>F7</sup>this Section of] the Scheme and other occupational pension schemes;

"qualifying service" has the meaning given in regulation 10 (read with regulation 11);

"recent leaver" has the meaning given in regulation 72 (3);

"reckonable pay" has the meaning given in regulation 15 (read with regulations 16 to 19);

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

<sup>F14</sup>“registered medical practitioner” has the meaning given in section 55 of the Medical Act 1983;]

"retail prices index" has the meaning given in section 989 of the Income Tax Act 2007<sup>M19</sup>;

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

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

<sup>F23</sup>“the Scheme” means the Health and Social Care Pension Scheme the rules of which are set out in these regulations and the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;]

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

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

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

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

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

"tier 1 ill-health pension" must be read in accordance with regulation 52;

"tier 2 ill-health pension" must be read in accordance with regulation 52;

"trade dispute" has the meaning given in Article 2 (2) of the Jobseekers (Northern Ireland) Order 1995<sup>M20</sup>;

<sup>F14</sup>“Waiting Period Joiner” has the meaning given in regulation 136Y;]

"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 <sup>F24</sup>this Section of] the Scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person's rights as such are to be disregarded.

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(3) In determining whether a person is a pensioner member of [<sup>F25</sup>this Section of] the Scheme, the fact that the person is not entitled to payment of pension because of Chapter 8 (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 Department amounts to whole-time employment in the case of an employment for services of the kind performed in the part-time employment, and
- (b) an employment that is comparable to two or more part-time employments that are held concurrently by a person is “whole-time” if it is employment for such number of hours or sessions as in the opinion of the Department amounts to whole-time employment in the case of an employment for services of the kind performed in the two or more part-time employments.

#### Textual Amendments

- F5** Words in reg. 6(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **16(a)**
- F6** Words in reg. 6(1) inserted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **11(a)**
- F7** Words in reg. 6(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F8** Words in reg. 6 inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **24(a)** (with reg. 89)
- F9** Words in reg. 6 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **24(b)** (with reg. 89)
- F10** Reg. 6(1)(b) substituted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **11(b)**
- F11** Words in reg. 6(1) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **reg. 16(b)(ii)**
- F12** Words in reg. 6(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **reg. 16(b)(ii)**
- F13** Words in reg. 6 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 17(a)**, reg. 1(2)

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- F14** Words in reg. 6 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 17(d)**, reg. 1(2)
- F15** Words in reg. 6(1) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **reg. 16(c)**
- F16** Words in reg. 6 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **24(c)** (with reg. 89)
- F17** Words in reg. 6 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 17(b)**, reg. 1(2)
- F18** Words in reg. 6(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **reg. 16(d)**
- F19** Words in reg. 6 inserted (with effect in accordance with reg. 1(4)(a) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), reg. 1(2), **14(a)**
- F20** Words in reg. 6 inserted (with effect in accordance with reg. 1(4)(a) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), reg. 1(2), **14(b)**
- F21** Words in reg. 6 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **24(d)** (with reg. 89)
- F22** Words in reg. 6 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 17(c)**, reg. 1(2)
- F23** Words in reg. 6(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **reg. 16(e)**
- F24** Words in reg. 6(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F25** Words in reg. 6(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### Marginal Citations

- M4** S.I. 1972/1265 (N.I. 14)  
**M5** 1993 c. 49  
**M6** S.I. 1995/3213 (N.I. 22)

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- M7** S.R. 1995 No. 95, as amended by S.Rs. 1997 Nos. 217 and 390, S.R. 1998 No. 299, S.R. 1999 No. 293, S.R. 2002 No. 69, S.Rs. 2004 Nos. 103 and 104, S.Rs. 2005 Nos. 155, 533, 534 and 565, S.Rs. 2006 Nos 159 and 410 and S.Rs 2008 Nos 96, 130 and 163
- M8** S.I. 1997/1177 (N.I. 7)
- M9** S.I. 1999/3147 (N.I. 11)
- M10** S.I. 2003/1250 as amended by S.I. 2007/3101
- M11** S.R. 2004 No. 156
- M12** 1971 c. 80
- M13** S.R. 1993 No. 326
- M14** 2004 c. 12
- M15** 1992 c. 7
- M16** S.R. 2004 No. 149
- M17** 1988 c. 1
- M18** 1999 c. 30
- M19** 2007 c. 3
- M20** S.I. 1995/2705 (N.I. 15)

### *Pensionable service*

#### **Meaning of “pensionable service”**

7.—(1) In this Part, references to a member's pensionable service, subject to paragraphs (2) and (3), are references to the aggregate of the following periods—

- (a) any period of service in respect of which the member contributes to [<sup>F26</sup>this Section of] the scheme under regulation 27 (contributions by members),
- (b) any period of absence from service which counts as pensionable service under regulation 9, <sup>F27</sup>...
- (c) any period of service credited to the member as pensionable service under Chapter 6 (transfers)[<sup>F28</sup>; and
- (d) any period of pensionable service the member is entitled to count under Chapter 10 of this Part.]

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

- (a) any period of service in respect of which the Department has paid contributions to another occupational pension scheme in respect of the member,
- (b) in the case of a pensioner member or deferred member, any period taken into account—
  - (i) in determining the member's entitlement to the pension in payment or, as the case may be, the deferred pension, or
  - (ii) in calculating the amount of that pension,
 but, in the case of a pensioner member or deferred member entitled to a pension under regulation 49 (partial retirement) subject to paragraph (6),
- (c) any period of service in respect of which the Department's liability to provide benefits is discharged—
  - (i) by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act,
  - (ii) under regulation 44 (repayment of contributions), or
  - (iii) by the payment of a transfer value payment on transfer out under Chapter 6 (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 Department and the member's employing authority of an intention to remain in pensionable service beyond 45 years, and
- (b) that notice is received by the Department and the member's employing authority—
- (i) not earlier than three months before the member reaches 45 years pensionable service, and
- (ii) by the end of the pay period during which the member reaches the 45 year limit.
- (4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years—
- (a) benefits under this Part shall be calculated by reference to a maximum of 45 years of pensionable service, and
- (b) the Department shall select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.
- (5) 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 49 (partial retirement), paragraph (2)(b) applies only to so much of the member's pensionable service as is mentioned in regulation 49(9)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).
- (7) Regulation 8 makes further provision where service is in part-time employment.
- <sup>F29</sup>(8) Where a member is also a member of the <sup>F30</sup>1995 Section], any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$SP=45yearsLSS$

where—

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

LSS is the length of superannuable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the <sup>F30</sup>1995 Section] and, in the case of a member of <sup>F31</sup>that Section] who has become entitled to a pension (including a preserved pension) under <sup>F31</sup>that Section], including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.]

#### Textual Amendments

- F26** Words in [reg. 7\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\), reg. 1\(2\), Sch. 2 Pt. 1](#)
- F27** Word in [reg. 7\(1\)\(b\)](#) omitted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature](#)



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- Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **17(a)**
- F28** Reg. 7(1)(d) and word inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **17(b)**
- F29** Reg. 7(8) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **25** (with reg. 89)
- F30** Words in reg. 7(8) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F31** Words in reg. 7(8) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**

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

8.—(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) Subject to paragraphs (3) to (6), if the part-time employment is for a specified number of sessions per week—

- (a) paragraph (1) does not apply, and
  - (b) the number of days of the member's pensionable service in the part-time employment for the period is calculated by multiplying the number of sessions of employment during the period by 7, and dividing by the number of sessions per week of the length of the specified sessions for a comparable whole-time employment.
- (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 7(3) (45 year limit), and for those purposes part-time employments held concurrently are treated as a single employment.

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



## Pensionable service: breaks in service

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.

(2) The period of absence counts as pensionable service if the member contributes to [<sup>F32</sup>this Section of] the Scheme under regulation 27 in respect of the period of absence.

[<sup>F33</sup>(3) If a member is on leave of absence but does not fall within paragraph (1)(a) to (e), and contributes to [<sup>F32</sup>this Section of] the Scheme under regulation 27 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member's leave of absence, 6 months; and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member's leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to [<sup>F34</sup>this Section of] the Scheme both member contributions under regulation 27 and employer contributions under regulation 31 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.]

(4) This paragraph applies if a person—

- (a) ceased to be an active member because of—
  - (i) ceasing to be employed in an employment in which the person is eligible to be such a member, or
  - (ii) exercising the option under regulation 25 (opting out of [<sup>F35</sup>this Section of] the Scheme), and
- (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.

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

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- (c) the person's rights under [<sup>F36</sup>this Section of] the Scheme in respect of that service have been extinguished under regulation 99 because a transfer value payment has been made in respect of them.

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

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

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

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

(9) For the regulations where paragraph (5) applies in respect of the service in which the person was an active member and becomes an active member again, see Chapter 7 (re-employment and rejoining [<sup>F37</sup>this Section of] the Scheme).

#### Textual Amendments

- F32** Words in reg. 9(2)(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F33** Reg. 9(3)(3A) substituted for reg. 9(3) (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **26** (with reg. 89)
- F34** Words in reg. 9(3A) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F35** Words in reg. 9(4)(a)(ii) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F36** Words in reg. 9(6)(c) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F37** Words in reg. 9(9) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

## Qualifying service

### Meaning of “qualifying service”

**10.**—(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 7(1)(c) (transferred-in service),
  - (b) in the case of a person in respect of whom a transfer value in respect of his rights under another pension arrangement [<sup>F38</sup>(including the [<sup>F39</sup>1995 Section] )] has been accepted under Chapter 6 (transfers), a period equal to the person's period as an active member in any occupational pension scheme in respect of which the rights accrued,
  - (c) 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 102,the period of employment that qualified the member for those rights, and
  - (d) any period treated as qualifying service under paragraph (3), (5) or (6) or under regulation 11, <sup>F40</sup> ...
  - (e) where the member ceased to be an active member under Part 3 not more than 12 months before becoming a member under this Part, any period of qualifying service under Part 3<sup>F41</sup>; and
  - (f) in the case of a person—
    - (i) who is eligible to join [<sup>F42</sup>this Section of] the Scheme by virtue of regulation 21(5)(c), and
    - (ii) for whom the interval between leaving the [<sup>F43</sup>1995 Section] and joining [<sup>F42</sup>this Section of] the Scheme is less than one month,a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation 5 of the 1995 Regulations when the member left that scheme]<sup>F44, F45</sup> ...
  - (g) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 10 of this Part.]
  - <sup>F46</sup>(h) in the case of a Waiting Period Joiner referred to in regulation 136Y, a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and
    - (i) in the case of a person who is eligible to join this Section of the scheme by virtue of regulation 21(5)(e), (g) or (h) (Eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.]
- (2) Paragraph (3) applies if a member who is employed on a casual basis—
- (a) ceases to pay contributions because of a break in the employment in which the member is an active member of a period not exceeding three months, and
  - (b) re-enters employment in which the member is eligible to be an active member on the same basis after the break.
- (3) For the purposes of this Part the member is treated—

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- (a) as continuing to be in qualifying service during the break, and
  - (b) as not being required to rejoin [<sup>F47</sup>this Section of] the Scheme on re-entering the employment.
- (4) For the other rules applying where there is a short break in service, see regulation 11.
- (5) If—
- (a) a pension becomes payable to a member under regulation 55 (early retirement on termination of employment by employing authority) in a case where regulation 57 (5) applies, and
  - (b) the member has elected to take benefits under regulation 55 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 8 (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.

#### Textual Amendments

- F38** Words in [reg. 10\(1\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\), 27\(2\)](#) (with [reg. 89](#))
- F39** Words in [reg. 10\(1\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\), Sch. 2 Pt. 2](#)
- F40** Word in [reg. 10\(1\)\(d\)](#) omitted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\), 18\(a\)](#)
- F41** [Reg. 10\(1\)\(f\)](#) and word added (with effect in accordance with [reg. 1\(5\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\), 27\(3\)](#) (with [reg. 89](#))
- F42** Words in [reg. 10\(1\)\(f\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\), Sch. 2 Pt. 1](#)
- F43** Words in [reg. 10\(f\)\(ii\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\), Sch. 2 Pt. 2](#)
- F44** [Reg. 10\(1\)\(g\)](#) and word inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\), 18\(b\)](#)
- F45** Word in [reg. 10\(1\)\(f\)](#) omitted (9.2.2012) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social](#)

Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(4), 13(2)

**F46** Reg. 10(1)(h)(i) inserted (9.2.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(4), 13(3)

**F47** Words in reg. 10(3)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### Qualifying service: disregard of breaks in service

**11.**—(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 10(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 [<sup>F48</sup>this Section of] the Scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment, and
  - (b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

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

- (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 44 in respect of the earlier period (but see paragraph (7)), or
  - (b) the person's rights under [<sup>F49</sup>this Section of] the Scheme in respect of that period have been extinguished under regulation 99 because a transfer value payment has been made.

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

(8) If—

- (a) a member is a deferred member or pensioner member in respect of the period of pensionable service before pensionable service ceases for an interval, and
- (b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 9(5) or regulation 111(2)(a),

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

#### Textual Amendments

- F48** Words in [reg. 11\(4\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F49** Words in [reg. 11\(6\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

### *Calculating service*

#### Calculation of periods of membership or service

**12.—**(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 [<sup>F50</sup>this Section of] the Scheme, and except where provided otherwise in this Part, periods of service are to be expressed in the first instance in complete days or fractions of a day, and the initial aggregation of periods that require to be aggregated is done in the first instance by reference to periods so expressed.

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

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

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

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

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

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

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

### Textual Amendments

- F50** Words in [reg. 12\(2\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

### *Pensionable pay*

#### Meaning of “pensionable pay”

**13.**—(1) In this Part, subject to the following paragraphs, “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 [<sup>F51</sup>this Section of] the Scheme.

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

- (a) in the case of a member in one such employment, as pensionable pay of that employment, and
- (b) in the case of a member in two or more such employments, as pensionable pay of such of those employments as the Department considers 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 two or more part-time employments, and
- (b) in the opinion of the Department, 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 two or more part-time employments are performed,

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

(5) In the case of a non-GP provider who is not in receipt of any salary, wages, fees or any other regular payment, pensionable pay means practitioner income less any sum on account of practice expenses (for these purposes, contributions payable under regulation 27(5) or (6) 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) an APMS contract;
- (c) payments from, or to, a practitioner who is a GMS practice or an APMS contractor in respect of the performance of certification services, commissioned services or collaborative services.



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(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 and Social Services Board 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 host Board in accordance with paragraph (11).

(11) A notice given under this regulation—

- (a) must be signed by all the non-GP providers and 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 and Social Services Board concerned; or
  - (ii) if no agreement is reached, a date decided by the Department;
- (c) will continue in effect until cancelled or amended by a subsequent notice in writing signed by all the partners in the partnership;
- (d) will be automatically cancelled upon a change in the members of the partnership.

#### Textual Amendments

**F51** Words in [reg. 13\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)

#### Pensionable pay: breaks in service

**14.—**(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 13 are reduced or cease.

(2) For the purposes of this Part (apart from regulations 27 and 28), and subject to paragraph (3) <sup>F52</sup>in the case of a member who is not a non-GP provider and paragraph (7) in the case of a member



who is a non-GP provider], amounts equal to the pensionable pay that the member would have received if those circumstances had not applied are treated as having been paid to the member.

(3) Paragraph (2) does not apply to a member [<sup>F53</sup>who is not a non-GP provider] falling within paragraph (1)(a) as respects any period after the earnings used to calculate the member's pensionable pay under regulation 13 have ceased to be paid to the member.

(4) For the purposes of regulations 27 and 28, if for any period whilst the member falls within—

- (a) paragraph (1) the earnings used to calculate the member's pensionable pay under regulation 13 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 13 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 9(3) [<sup>F54</sup>or (3A) (up to 24] months' leave of absence with full contributions) amounts equal to the rate of the member's pensionable pay immediately before the absence are treated as pensionable pay.

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

- (a) is one of a number of non-GP providers or practitioners who have elected as described in regulation [<sup>F55</sup>13(8)] , each non-GP provider's or practitioner's pensionable earnings will be calculated as if the partnership's aggregate pensionable [<sup>F56</sup>earnings] were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased;
- (b) except where the non-GP provider's pensionable [<sup>F56</sup>earnings] falls to be calculated as described in sub-paragraph (a), the non-GP provider will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or ceased.

[<sup>F57</sup>(8) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies—

- (a) a non-GP provider falling within paragraph (1)(a) will, subject to sub-paragraph (b), be treated as having continued in pensionable employment for a period of 12 months from the date on which the member's earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period;
- (b) a non-GP provider falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (4)(b) will, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment;
- (c) a member other than a non-GP provider will, subject to paragraph (5), be treated as having left pensionable employment except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment.

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

- (a) during the 12 month period, the non-GP provider's pensionable earnings will be calculated as described in paragraph (7)(a) or (b);

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(b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.]

(9) For the purposes of paragraph (8) [F58(b)] , the rate of contributions payable shall be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (4) (a) had the non-GP provider's reduced earnings excluded any earnings for a day during which the non-GP provider, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.

(10) If a [F59 member] fails to pay any contributions which are required to be paid to [F60 this Section of] 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 shall be payable unless the [F59 member] actually leaves pensionable employment.

(11) If a [F61 member] to whom [F62 this regulation] applies leaves pensionable employment or, by virtue of [F63 paragraph (8)(c), (8A)(b) or (10)] , is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the [F61 member] later returns to pensionable employment regulation 9(4) will apply as if the reference to 12 months were a reference to 3 years.

(12) The benefits payable on the death of a [F64 member] whose earnings ceased during a period of absence to which paragraph (7) applies will be calculated as if the [F64 member] had died in pensionable employment on the day before the [F64 member]'s earnings ceased.

#### Textual Amendments

- F52** Words in reg. 14(2) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(2)** (with reg. 89)
- F53** Words in reg. 14(3) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(3)** (with reg. 89)
- F54** Words in reg. 14(6) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(4)** (with reg. 89)
- F55** Word in reg. 14(7) substituted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(5)** (with reg. 89)
- F56** Words in reg. 14(7)(a)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **15**
- F57** Reg. 14(8)(8A) substituted for reg. 14(8) (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(6)** (with reg. 89)
- F58** Word in reg. 14(9) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(7)** (with reg. 89)

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- F59** Word in reg. 14(10) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(8)** (with reg. 89)
- F60** Words in reg. 14(10) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F61** Word in reg. 14(11) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(9)(a)** (with reg. 89)
- F62** Words in reg. 14(11) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(9)(b)** (with reg. 89)
- F63** Words in reg. 14(11) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(9)(c)** (with reg. 89)
- F64** Word in reg. 14(12) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **28(9)(c)** (with reg. 89)

### *Reckonable pay*

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

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

- (a) a member whose active membership ceases, <sup>F65</sup>...
- (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 49 (partial retirement: members aged at least 55), or
  - (ii) under regulation 45(1)(b)(ii)<sup>F66</sup>; or
- (c) a non-contributing member.]

(2) This regulation is subject to regulations 16 to 19 <sup>F67</sup>, 136G and 136I to 136K] .

<sup>F68</sup>(3) A member’s “reckonable pay” is determined by the formula—

$IRP_x(RP_a/RP_i)$

Where—

IRP is the interim reckonable pay determined in paragraph (4), (6) or (7), as appropriate, before any adjustment for inflation in accordance with regulation 16,

RP<sub>a</sub> is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, including any adjustment for inflation described in regulation 16, and

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R<sub>Pi</sub> is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, excluding any adjustment for inflation described in regulation 16, but instead including any increases that pay would attract if it was the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act (Northern Ireland) 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, <sup>F69</sup> ...

(ii) in a case within paragraph (1)(b), the day before that on which the member becomes entitled to the pension;

[<sup>F70</sup>(iii) in a case within paragraph (1)(c), the member's last day of pensionable service.]

(b) “the best consecutive 1095 day period” shall be determined by comparing—

(i) the period of 1095 days immediately preceding the relevant day (Period 1);

(ii) the period of 1095 days which overlaps Period 1 by 730 days (Period 2);

(iii) the period of 1095 days which overlaps Period 2 by 730 days,

and so on.

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

(a) that begins—

(i) during the member's pensionable service, and

(ii) within the period of 10 years ending with the relevant day, and

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

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

(a) is less than 365 days, or

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

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

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

(a) regulation 9(5) (pensionable service: breaks in service), or

(b) regulation 111(2) (exception to general rule in regulation 110),

the references in—

(i) paragraph (4) to a period of pensionable service equalling 365 days,

(ii) paragraph (5) to a period of 1095 days,

(iii) paragraph (7) to the period of pensionable service less than 365 days or more than 365 days but less than 1095 days,

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

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(9) Paragraph (8) does not apply if the other employment is an employment in respect of which the member continues to accrue benefits in accordance with regulation 57 despite being entitled to a pension under regulation 55.

(10) If—

- (a) a person's reckonable pay in respect of an employment that the person has left falls to be determined under this regulation by reference to the person's pensionable pay for any period in respect of an employment, and
- (b) the person held that employment concurrently during that period with another employment in which the person was an active member,

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

[<sup>F71</sup>(11) For the purposes of this regulation, pensionable service does not include—

- (a) any period of pensionable service that a member is entitled to count under Chapter 6 of this Part unless the transfer value payment in respect of that service is accepted from a corresponding 2008 scheme;
- (b) any period of pensionable service that a Section 2008 Optant is entitled to count under—
  - (i) regulation 136C,
  - (ii) regulation 136E, or
  - (iii) regulation 136M.]

### Textual Amendments

- F65** Word in reg. 15(1)(a) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **16(2)(a)**
- F66** Reg. 15(1)(c) and word added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **16(2)(b)**
- F67** Words in reg. 15(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **19(2)**
- F68** Reg. 15(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 18**, reg. 1(2)
- F69** Word in reg. 15(5)(a)(i) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **16(3)(a)**
- F70** Reg. 15(5)(a)(iii) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **16(3)(b)**
- F71** Reg. 15(11) added (with effect in accordance with reg. 1(3)(c) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and](#)

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Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **19(4)**

## Adjustments for inflation in determining reckonable pay under regulation 15

16.—(1) In determining—

- (a) the pensionable pay for the period of pensionable service referred to in regulation 15(4),
- (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 15(6), or
- (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 15(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 (Northern Ireland) 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 15(4), (6) or (7), and
- (b) “the relevant day” has the meaning given in regulation 15(5).

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

17.—(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 <sup>F72</sup>this Section of] the Scheme as falls to be calculated by reference to capped transferred-in service.

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

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

- (a) in relation to the tax year 2008-09, £117,600, and
- (b) in relation to any later tax year, the figure found for that year under paragraphs (5) and (6).

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

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

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

(6) In this regulation—

- (a) “capped transferred-in service” has the meaning given by regulation 104; and

(b) “pensionable pay” has the meaning given by regulation 13.

#### Textual Amendments

**F72** Words in [reg. 17\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

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

**18.—(1)** This regulation applies if a member's reckonable pay falls to be determined under regulation 15 by reference to the member's pensionable pay for any period for a part-time employment that was not held concurrently with any other such employment in which the member was an active member.

(2) The member's reckonable pay for that period in respect of the part-time employment is the amount, subject to paragraph (4), 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 Department that, by reason of exceptional circumstances, the application of the assumptions in paragraph (3) for the purposes of paragraph (2) would result in an excessive amount being given by paragraph (2), that amount must be reduced by such amount as is in the opinion of the Department 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 83(1) or (2) (lump sum payable on death of active or pensioner member).

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

**19.—(1)** This regulation applies if under regulation 15(10) a member's reckonable pay falls to be determined by reference to the member's pensionable pay for any period for two or more part-time employments held concurrently during that period.

(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 18 as if it were not held concurrently with any other such employment.

Step 2

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

Step 3

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

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



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

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—

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

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 paragraphs (3) and (4) is calculated on the basis that a session is 3.5 hours or such number of hours as the Department may in any particular case determine.

### **Out of hours providers**

**20.**—(1) For the purposes of these Regulations, an OOH provider is—

- (a) a company limited by guarantee (which is not otherwise an employing authority)—
  - (i) in which all the members of the company are registered medical practitioners, APMS contractors or GMS practices and the majority of those members are—
    - (aa) APMS contractors, GMS practices whose APMS contracts or GMS contracts require them to provide OOH services; or
    - (bb) registered medical practitioners who are partners or shareholders in an APMS contractor or a GMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract or APMS contract,
  - (ii) which has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services, and
  - (iii) in respect of which a Health and Social Services Board appointed by the Department to act on its behalf—
    - (aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
    - (bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
    - (cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or
- (b) some other body corporate (which is not otherwise an employing authority) which—



- (i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
  - (ii) operates on a not-for-profit basis;
  - (iii) is not an associated company in relation to another person;
  - (iv) has memorandum or articles or rules that—
    - (aa) prohibit the payment of dividends to its members; and
    - (bb) require its profits (if any) or other income to be applied to promoting its objects, and
    - (cc) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not-for-profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,
  - (v) has at least one member who is—
    - (aa) an APMS contractor or a GMS practice; or
    - (bb) a partner in a partnership that is an APMS contractor or a GMS practice; or
    - (cc) a shareholder in a company limited by shares that is an APMS contractor or a GMS practice,
  - (vi) has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice, for the provision of OOH services; and
  - (vii) is approved as an employing authority by a Health and Social Services Board appointed by the Department to act on its behalf—
    - (aa) pursuant to a written application made by the body to it for that purpose; and
    - (bb) that Health and Social Services Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (2) For the purposes of paragraph (1)(b)(iii)—
- (a) a body corporate is to be treated as another person's associated company if that person has control of it, except if that person is an employing authority; and
  - (b) a person shall be taken to have control of a body corporate if he exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over its affairs.
- (3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Health and Social Services Board appointed by the Department to act on its behalf (“the appointed Board”).
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Board (if given) shall have effect (“the nominated date”).
- (5) If a company limited by guarantee or other body corporate makes an application and—
- (a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and
  - (b) it approves that application, that approval shall take effect on the later of the nominated date and the approval date.
- (6) If paragraph (5) applies, HSC employment shall be treated as commencing on the later of the nominated date (if any) and the approval date.

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

(8) The appointed Board may give an OOH provider a notice in writing terminating its participation in <sup>F73</sup>this Section of] the Scheme where that provider—

- (a) does not have in force a guarantee, indemnity or bond as required by the Department in accordance with regulation 33;
- (b) has ceased to satisfy the conditions for approval;
- (c) has notified the Health and Social Services Board that any one of the following events has occurred in respect of it—
  - (i) a proposal for a voluntary arrangement has been made or approved under Part II of the Insolvency (Northern Ireland) Order 1989 <sup>M21</sup> (“the 1989 Order”); or
  - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Part III of the 1989 Order; or
  - (iii) a receiver, manager or administrative receiver has been appointed under Part IV of the 1989 Order; or
  - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part V or Part VI of the 1989 Order or an instrument of dissolution has been drawn up in accordance with section 67 of the Industrial and Provident Societies (Northern Ireland) Act 1969 <sup>M22</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 of the Companies (Northern Ireland) Order 1986 <sup>M23</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;
- (b) that wishes to cease to participate in <sup>F74</sup>this Section of] 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 must cease to participate in <sup>F75</sup>this Section of] the Scheme on—

- (a) such date as the appointed Board may specify in a notice under paragraph (8);
- (b) the day upon which the period referred to in paragraph (9)(b) expires if a notice under that provision has been given.

#### Textual Amendments

- F73** Words in [reg. 20\(8\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)
- F74** Words in [reg. 20\(9\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)
- F75** Words in [reg. 20\(10\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature](#)

Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), Sch. 2 Pt. 1

**Marginal Citations**

- M21** S.I. 1989/2405 (N.I. 19)  
**M22** 1969 c. 24  
**M23** S.I. 1986/1032 (N.I. 6)

CHAPTER 2

MEMBERSHIP

**Eligibility: general**

**21.**—(1) A person is eligible to be an active member of [<sup>F76</sup>this Section of] the Scheme if conditions A to C are met and the person is not prevented by regulation 22, 23 or 26.

(2) Condition A is that the person is in HSC employment.

(3) Condition B is that the person—

- (a) enters HSC employment on or after 1st April 2008, or
- (b) entered HSC employment before that date and on that date was not an active member of the [<sup>F77</sup>1995 Section] in that employment or any other HSC employment,

and meets any one of the “ [<sup>F78</sup>other Section conditions] ” specified in paragraph (5).

(4) Condition C is that the person has not reached the age of 75.

(5) The “ [<sup>F79</sup>other Section conditions] ” are that—

- (a) the person has not previously been an active member of the [<sup>F80</sup>1995 Section] ,
- (b) the person ceased to be an active member of that [<sup>F81</sup>the 1995 Section] 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 [<sup>F79</sup>that Section] ,
- (c) the person ceased to be an active member of that [<sup>F81</sup>the 1995 Section] 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 [<sup>F79</sup>that Section] and has received a repayment of contributions in respect of that membership, or
- (d) the person ceased to be an active member of that [<sup>F82</sup>1995 Section] on or after 1st April 2008 on leaving HSC employment and before the person re-entered such employment—
  - (i) a transfer payment was made in respect of the person under Part (VI) of [<sup>F79</sup>that Section] , or
  - (ii) the person made an application under regulation 54 of [<sup>F79</sup>that Section] (exercising a right to transfer or buy-out) from which the person may not withdraw,

[<sup>F83</sup>(e) the person—

- (i) ceased to be an active member of the [<sup>F82</sup>1995 Section] on leaving HSC employment,
- [<sup>F84</sup>(ii) became a deferred member of that Section on leaving that employment and has not since become a pensioner member of that Section between the date of leaving that employment and joining this Section of the Scheme, and]
- (iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment; or

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- (f) the person—
  - (i) ceased to be an active member of the [<sup>F82</sup>1995 Section] before 1st April 2008 on leaving HSC employment,
  - (ii) became a deferred member of [<sup>F79</sup>that Section] on leaving that employment,
  - (iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment, and
  - (iv) before the person re-entered such employment—
    - (aa) a transfer payment was made in respect of the person under Part VI of [<sup>F79</sup>that Section] , or
    - (bb) the person made an application under regulation 54 of [<sup>F79</sup>that Section] (Exercising a right to transfer or buy-out) from which the person may not withdraw.]
- [<sup>F85</sup>(g) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation 9 of the 1995 Regulations (Opting out of the Scheme) and—
  - (i) as a result of that notice has been treated as ceasing to be an active member of that Section, and
  - (ii) pursuant to that notice remains opted-out of that Section for five years or more;
- (h) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation 9 of the 1995 Regulations (Opting- out of the Scheme) and following that notice, has ceased to be an active member of that Section for any one period of five years or more comprising the aggregate of—
  - (i) any period during which the person leaves HSC employment, and
  - (ii) any period during which the person is treated as never having been an active member of that Section in accordance with paragraph (3) of regulation 9 of those Regulations in respect of one or more later periods of HSC employment entered into after having given the notice for the purposes of paragraph (1) or (1A) of that regulation;
- (i) the person—
  - (i) has given notice for the purposes of regulation 9 of the 1995 Regulations (Opting-out of the scheme) and as a result of that notice all of that person’s HSC employments ceased to be superannuable employment for the purposes of those Regulations,
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations, and
  - (iii) has been treated as ceasing to be in superannuable employment under the 1995 Regulations for a period of 12 months or more;
- (j) the person—
  - (i) has given notice for the purposes of regulation 9 of the 1995 Regulations (Opting-out of the scheme) and as a result of that notice all of that person’s HSC employments ceased to be superannuable employment for the purposes of those Regulations,
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations, and
  - (iii) has, in respect of the HSC employments referred to in head (i), either received a repayment of contributions or exercised the right to a transfer payment under Part VI of those Regulations.]

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but <sup>F86</sup>sub-paragraphs (d) to (f)] will not apply if the Department has permitted such a person to rejoin the HPSS Superannuation Scheme 1995 in the circumstances described in regulation 7(3) <sup>M24</sup> of the <sup>F87</sup>1995 Section] .

(6) This regulation shall apply to any person who has previously been an active member of a corresponding health service scheme as though in paragraphs (3) and (5) any reference to—

- (a) “<sup>F88</sup>1995 Section]” includes a reference to that corresponding health service scheme, and
- (b) “HSC employment” includes a reference to—
  - (i) employment to which regulations made under sections 10 (1) and (2) and 12 (1) and (2) of, and Schedule 3 to, the Superannuation Act 1972 <sup>M25</sup> apply,
  - (ii) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 <sup>M26</sup>,
  - (iii) (employment to which regulations made under section 10 of the Superannuation Act 1972 and having effect in Scotland apply,
  - (iv) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) <sup>M27</sup> applies, and
  - (v) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006 <sup>M28</sup>.

#### Textual Amendments

- F76** Words in reg. 21(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F77** Words in reg. 21(3)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F78** Words in reg. 21(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F79** Words in reg. 21(5) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F80** Words in reg. 21(5)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F81** Words in reg. 21(5)(b)(c) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **20(a)**
- F82** Words in regs. 21(5)(d)-(f) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**

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- F83** Reg. 21(5)(e)(f) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **29(2)** (with reg. 89)
- F84** Reg. 21(5)(e)(ii) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **20(b)**
- F85** Reg. 21(5)(g)-(j) added (with effect in accordance with reg. 1(3)(b) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 19**, reg. 1(2)
- F86** Words in reg. 21(5) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **29(3)** (with reg. 89)
- F87** Words in reg. 21(5) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F88** Words in reg. 21(6)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**

#### Marginal Citations

- M24** Regulation 7 was substituted by regulation 5 of S.R. 2008 No. 163
- M25** 1972 c. 11
- M26** 1967 c. 28
- M27** 1984 c. 8 (Tynwald)
- M28** 2006 c. 41

#### [<sup>F89</sup>Eligibility: transitional

- 21A.**—(1) A person is eligible to be an active member of this Section of the Scheme if—
- (a) the person is not prevented from being so by regulation 22, 23 or 26, and
  - (b) either—
    - (i) the Department has accepted that person’s option to join this Section of Scheme under Chapter 10 of Part 2, or
    - (ii) that person meets all of the requirements in paragraph (2).
- (2) Those requirements are that the person—
- (a) is under age 75,
  - (b) was an active member of the 1995 Section on or after 1st April 2008,
  - (c) became a pensioner member of the 1995 Section on or before 1st October 2009,
  - (d) has either—
    - (i) returned to HSC employment since becoming a pensioner member referred to in sub-paragraph (c), or
    - (ii) commenced for the first time HSC employment, and

- (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in sub-paragraph (d).

This is subject to paragraphs (3) to (8).

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

- (a) 12 (Normal retirement pension),
- (b) 13A(3)(a) (tier 1 ill-health pension on early retirement),
- (c) 14A (Early retirement pension (termination of employment by employing authority)), or
- (d) 16 (Early retirement pension with actuarial reduction).

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

- (a) 13 (Early retirement pension (ill health)),
- (b) 14 (Early retirement pension (redundancy etc)).

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation 13A(3)(b) (tier 2 ill-health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last—

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

(6) A person to whom paragraph (1)(b)(i) or (3)(b) applies and who is entitled to a tier 1 ill-health pension under regulation 13A(3)(a) of the 1995 Regulations, ceases to be eligible to be an active member of this Section of the Scheme from the date the Department makes a determination that that person is entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension under regulation 13B(3) of those Regulations (Re-assessment of ill-health condition determined under regulation 13A).

(7) For the purposes of this regulation—

- (a) “Waiting Period A” is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations;
- (b) “Waiting Period B” is a period beginning on the day the person becomes entitled to the pension under the 1995 Regulations which is equal to the calendar length of—
  - (i) any increase to the person’s superannuable service in the 1995 Section which has been applied in accordance with paragraph (3) of regulation 13 of the 1995 Regulations (Early retirement pension (ill health)), or
  - (ii) any additional service with which the person has been credited in accordance with regulation 5 of the Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983.

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

- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
- (b) the “1995 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;

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- (c) regulations “12”, “13”, “13A”, “13A(3)(a)”, “13A(3)(b)”, “13B(3)”, “14”, “14A” or “16” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations, and
- (d) “regulation 5 of the Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.]

#### Textual Amendments

**F89** Reg. 21A substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\), Pt. 3 reg. 20, reg. 1\(2\)](#)

#### Restrictions on eligibility: general

**22.**—(1) A person who is entitled to the immediate payment of a pension under [<sup>F90</sup>this Section of] the Scheme under a regulation that requires the person not to be in HSC employment may only be an active member in accordance with—

- (a) regulation 49 (partial retirement (members aged at least 55)),
- (b) regulation 112 (effect of re-employment on tier 2 ill-health pensions),
- (c) regulation 57 (exceptions to requirement that HSC employment must have ceased), or
- (d) Chapter 7.

[<sup>F91</sup>(2) A person is not eligible to be an active member of this Section of the Scheme if the person—

- (a) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or before, 1st April 2008 (except if paragraph (1)(b)(i) of regulation 21A applies to that person), or
- (b) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or after, that date (except if paragraph (1)(b)(i) or (ii) of regulation 21A applies to that person), or
- (c) is a deferred member of the 1995 Section or a corresponding 1995 scheme, but is not a deferred member—
  - (i) to whom regulation 21(5)(e), (f), (g) or (h) applies, and
  - (ii) in respect of whom permission of the Department to rejoin the 1995 Section has not been granted pursuant to regulation 7(3) of that Section (Restrictions on membership).]

(3) A person is not eligible to be an active member of [<sup>F90</sup>this Section of] the Scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under Article 3 or 11 of the Superannuation (Northern Ireland) Order 1972 in respect of service in that employment.

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

(5) A person who holds an honorary appointment and does not at the same time hold any other employment which entitles him to be a member of [<sup>F92</sup>this Section of] the Scheme is not eligible to be an active member of [<sup>F92</sup>this Section of] the Scheme.



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(6) A person is not eligible to be an active member of [<sup>F92</sup>this Section of] the Scheme in any further employment if the person—

- (a) becomes entitled to a tier 2 pension under regulation 52, and
- (b) opts to exchange that pension for a lump sum in accordance with regulation 59.

[<sup>F93</sup>(7) A person is not eligible to be an active member of [<sup>F92</sup>this Section of] the Scheme in any future employment if the person—

- (a) ceases to be entitled to a tier 1 ill-health pension under regulation 52; and
- (b) becomes entitled to a tier 2 ill-health pension under that regulation on the date the Department makes a determination under regulation 53(3).

This is subject to paragraph (8).

(8) A person to whom paragraph (7) applies is eligible to be an active member of [<sup>F92</sup>this Section of] the Scheme in any further employment after the first anniversary of that person's first day of such employment following the date of the Department's determination under regulation 53.]

#### Textual Amendments

- F90** Words in regs. 22(1)-(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F91** Reg. 22(2) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 21**, reg. 1(2)
- F92** Words in regs. 22(5)-(8) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F93** Reg. 22(7)(8) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **17**

#### Concurrent employments

**23.**—(1) This regulation applies if for any period a person holds two or more employments in respect of which the person is (or apart from this regulation would be) eligible to be an active member of [<sup>F94</sup>this Section 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 Department, do not, taken together, exceed a comparable whole-time employment not held concurrently with any other employment.

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

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

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a comparable whole-time employment under which services of the kinds performed in the two or more employments were performed.

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

(6) A person may participate in [<sup>F94</sup>this Section of] the Scheme in respect of employment as an officer even if he also participates in Part 3 in respect of concurrent employment as a practitioner.

#### Textual Amendments

**F94** Words in [regs. 23\(1\)\(6\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

### *Joining and leaving the Scheme*

#### Joining [<sup>F95</sup>this Section of] the Scheme

**24.—**(1) A person entering employment with an employing authority in which the person is eligible to be an active member of [<sup>F95</sup>this Section of] the Scheme becomes such a member, unless regulation 25(4) applies (opting out in the first pay period).

(2) A person who is eligible to be such a member by virtue of falling within regulation 21(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 [<sup>F95</sup>this Section of] the Scheme under regulation 25(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 25(5), may opt to become an active member in the employment in which the member is eligible to be such a member by giving notice in writing to the employing authority in such form as the Department requires.

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

(a) from the beginning of the first pay period to begin after the notice is received by the employing authority, or

(b) if the notice specifies a date that is the first day of a later pay period, from that date.

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

(6) Paragraph (1) is subject to regulation 25(5).

#### Textual Amendments

**F95** Words in [reg. 24](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

## Opting out of <sup>F96</sup>this Section of] the Scheme

25.—(1) A person who is an active member of <sup>F96</sup>this Section of] the Scheme in any employment may opt at any time to cease to be such a member by giving notice in writing to the person's employing authority.

- (2) A person who so opts ceases to be such a member on the date the notice takes effect.
- (3) The notice takes effect—
  - (a) from the beginning of the first pay period to begin after the notice is received by the employing authority, or
  - (b) if the notice specifies a later date, from the beginning of the first pay period after that in which the specified date falls.

(4) A person within regulation 24(1) (automatic membership on entering employment) in respect of an 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 24(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 24(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 <sup>F96</sup>this Section of] the Scheme in that employment under regulation 24(3).

### Textual Amendments

**F96** Words in [reg. 25](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)

## Restriction on further participation in <sup>F97</sup>this Section of] the Scheme

26.—(1) A person who ceases to meet any of conditions A to C in regulation 21 in an employment or is prevented by regulation 22 or 23 from continuing to be an active member in an employment must cease to be an active member of <sup>F97</sup>this Section of] the Scheme in that employment.

- (2) Accordingly—
  - (a) a person within paragraph (1) may not make any further contributions to <sup>F97</sup>this Section of] the Scheme under Chapter 3, and

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- (b) any further service of the person is not pensionable service for the purposes of <sup>[F97]</sup>this Section of] the Scheme.

#### Textual Amendments

**F97** Words in [reg. 26](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

## CHAPTER 3

### CONTRIBUTIONS

#### *Basic contributions by members*

#### <sup>[F98]</sup>Contributions by members

**27.**—(1) Each active member must make contributions to this Section of the Scheme (“member contributions”) in respect of—

- (a) the member’s pensionable pay in accordance with regulation 28 where the member is not a non-GP provider;
- (b) the member’s pensionable earnings in accordance with regulation 30 where the member is a non-GP provider.

(2) Member contributions must be made—

- (a) until the member completes 45 years’ pensionable service, or
- (b) where the notice required by regulation 7(3) has been properly received, until the member ceases officer service.

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

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

(5) Paragraph (6) applies where a member has failed to pay member contributions or an employing authority has failed to deduct such contributions in accordance with this regulation.

(6) The Department may recover any sum that remains due in respect of contributions referred to in paragraph (5) by deduction from any payment by way of benefits to, or in respect of, the member if—

- (a) the member agrees to such a deduction; and
- (b) the deduction is to the member’s advantage.

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

(8) A member who is absent from service in circumstances within regulation 9(1) to <sup>[F99]</sup>(3A) , may make contributions to this Section of the Scheme in respect of the member’s pensionable pay or, as the case may be, pensionable earnings in accordance with that regulation and whichever of regulation 28 or 30 applies to that member.

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

#### Textual Amendments

- F98** Reg. 27 substituted (20.1.2011) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/420), regs. 1(2), **11**
- F99** Word in reg. 27(8) substituted (14.3.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(2), **14**

#### [<sup>F100</sup>Contribution rate for members other than non-GP providers

**28.**—(1) Contributions under regulation 27(1)(a) must be paid at the member's contribution rate for the scheme year in question.

[<sup>F101</sup>(2) A member's contribution rate is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.

#### Scheme Year 2012-2013

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £26,557	6.5%
£26,558 to £48,982	8%
£48,983 to £69,931	8.9%
£69,932 to £110,273	9.9%
£110,274 to any higher amount	10.9%]

(3) The pensionable pay bands and contribution percentage rates shall be determined in accordance with [<sup>F102</sup>the table in paragraph (2)] in respect of each scheme year.

(4) For the purposes of this regulation “the relevant table” means—

- (a) in respect of the 2010-2011 scheme year, table 1 where paragraph (2) of regulation 29 applies and table 2 if paragraph (16), (17) or (21) of that regulation applies;
- (b) in respect of the 2011-2012 scheme year, table 2.

**Table 1**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
Up to £20,709	5%

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<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
£20,710 to £68,392	6.5%
£68,393 to £107,846	7.5%
£107,847 to any higher amount	8.5%

**Table 2**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable Pay band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%.]

#### **Textual Amendments**

- F100** Reg. 28 substituted (20.1.2011) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/420), regs. 1(2), **12**
- F101** Reg. 28(2) substituted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **12(2)**
- F102** Words in reg. 28(3) substituted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **12(3)**

[<sup>F103</sup>[<sup>F104</sup>29 Determination of pensionable pay for the purposes of setting a contribution rate for members other than non-GP Providers]

29.—(1) For the purposes of this regulation—

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this part (“the current scheme year”); and
- (b) if a member holds two or more pensionable employments at the same time—
  - (i) the determinations referred to in paragraphs (4) to (21) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2) For the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (3) to (15) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

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

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

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to [<sup>F105</sup>this Section of] the scheme;
  - (b) for the purposes of calculating the member's pensionable pay—
    - (i) contributions for any period referred to in sub-paragraph (a) shall be deemed to have been paid,
    - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 14 shall be included;
  - (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.
- (4) If a member—
- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;
  - (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
  - (c) is employed by that authority on the first day of the current scheme year,
- the member shall pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F106</sup>the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay received during the previous scheme year.
- (5) If a member—
- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;
  - (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
  - (c) is employed by that authority on the first day of the current scheme year,
- the member shall pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F106</sup>the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Department determines would have been paid in respect of a single comparable whole-time employment during the previous scheme year.
- (6) If a member—
- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
  - (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
  - (c) is employed by that authority on the first day of the current scheme year,
- the member shall pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F106</sup>the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—
- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole-time employment, and
  - (ii) the amount the Department determines would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

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(7) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F106</sup>the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$RPPNDPE \times 365$$

where—

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

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

(8) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [<sup>F106</sup>the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$CWTENDPE \times 365$$

where—

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

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

(9) If a member—

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



the member shall pay contributions during the current scheme year at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

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

where—

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

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

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

(10) If a member—

- (a) commenced pensionable employment with an employing authority on a whole-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$RPPNDPE \times 365$$

where—

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

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

(11) If a member—

- (a) commenced pensionable employment with an employing authority on a part-time basis during the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$CWTENDPE \times 365$$

where—

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CWTE is the amount the Department determines would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment;  
NDPE is the number of days of pensionable employment with that employer during the previous scheme year.

(12) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;
- (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

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

(13) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$RPPNDPE \times 365$$

where—

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

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

(14) If a member—

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

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

$$\text{CWTENDPE} \times 365$$

where—

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

(15) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

$$(\text{RPP} + \text{CWTE}) \text{NDPE} \times 365$$

where—

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

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

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

(16) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of [F106the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20).

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(17) Subject to paragraph (18), if at any time during the current scheme year, a change is made to a member's annual rate of pensionable pay or pensionable allowances in respect of an existing employment the member shall pay contributions—

- (a) from the first day of the next pay period immediately following the pay period in which the change is made at the rate specified in column 2 of [<sup>F106</sup>the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20); and
- (b) as if the member's employment had commenced on that date.

(18) Paragraph (17) does not apply to a change made to a member's annual rate of pensionable allowances in respect of an existing employment that is determined by that member's employer to have been made in respect of—

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

(19) If the change to a member's pensionable pay referred to in paragraph (17) is made in respect of an existing part-time employment, that paragraph shall not apply unless there is a corresponding change to the amount of pensionable pay that would be paid to that member in respect of a whole-time comparable employment.

(20) Where paragraph (16) or (17) apply the Department shall determine the member's pensionable pay—

- (a) by applying the formula—

$$\text{EPPNDPE} \times 365$$

where—

EPP is the estimated pensionable pay that the member's employing authority estimates will be payable to the member in respect of that employment during the current scheme year;

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

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

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

(21) If none of paragraphs (4) to (17) apply—

- (a) the Department must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (4) of regulation 28, have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances; and
- (b) the member shall pay contributions at the rate specified in column 2 of [<sup>F107</sup>the table in paragraph (2)] of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with sub-paragraph (a).

(22) If, during the current scheme year—

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

- (i) during an earlier scheme year, or
  - (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraph (16) or (17), or
  - (iii) in part during the scheme year referred to in head (i) and in part during the period referred to in head (ii);
- (b) that member is in pensionable employment with the employing authority making that payment on the day that it is made; and
  - (c) that payment does not exceed £150,

for all purposes under [<sup>F105</sup>this Section of] the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the current scheme year, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(23) If, during the current scheme year—

- (a) a payment is made to a member in respect of work that was undertaken by that member—
  - (i) during an earlier scheme year, or
  - (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraph (16) or (17), or
  - (iii) in part during the scheme year referred to in head (i) and in part during the period referred to in head (ii);
- (b) that member is not in pensionable employment with the employing authority making that payment on the day that it is made; and
- (c) that payment does not exceed £150,

for all purposes under [<sup>F105</sup>this Section of] the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the scheme year in which the member's pensionable employment with that employing authority ceased, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the member's employment ceased.

(24) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;
- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and
- (c) on the day that payment is made that member is in pensionable employment with the employing authority by which that payment is made,

for all purposes under [<sup>F105</sup>this Section of] the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year,
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(25) If, during the current scheme year—

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- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;
- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made, and
- (c) on the day that payment is made that member is not in pensionable employment with the employing authority by which that payment is made,

for all purposes under [<sup>F105</sup>this Section of] the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year,
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day the member's pensionable employment with that employing authority ceased as determined in accordance with this regulation.

(26) In any case where paragraph (16) applies and it is apparent at the time when the person becomes an active member in an employment under this Part the person's pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority consider appropriate for [<sup>F108</sup>the current scheme year] and, in the case of a member who works part time, is the variable amount that would be paid in respect of a comparable whole time employment.

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

- (a) the person was an active member of [<sup>F105</sup>this Section of] the Scheme during any period during which the person was an active member of that scheme; and
- (b) the pay by reference to which the person's benefits under that scheme were calculated was pensionable pay for the purposes of [<sup>F105</sup>this Section of] the Scheme.]

#### Textual Amendments

- F103** Reg. 29 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **19**
- F104** Words in reg. 29 heading substituted (20.1.2011) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/420\)](#), regs. 1(2), **13(2)**
- F105** Words in reg. 29 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**
- F106** Words in reg. 29(4)-(17) substituted (1.4.2012) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/78\)](#), regs. 1(2), **13**
- F107** Words in reg. 29(21) substituted (1.4.2012) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/78\)](#), regs. 1(2), **13**
- F108** Words in reg. 29(26) substituted (20.1.2011) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/420\)](#), regs. 1(2), **13(4)**

### [F109] **Contribution rate and determination of pensionable earnings for non-GP providers**

**30.**—(1) Member contributions payable by a non-GP Provider under regulation 27(1)(b) must be paid at the member's contribution rate for the scheme year in question.

(2) A member's contribution rate is the percentage specified in column 2 of the relevant table in paragraph (14) in respect of the corresponding pensionable earnings band specified in column 1 of that table into which the member's pensionable earnings falls.

(3) The pensionable earnings bands and contribution percentage rates shall be determined in accordance with the relevant table in respect of each scheme year.

(4) Paragraph (5) applies where, in respect of a scheme year, a non-GP provider—

- (a) has certified their pensionable earnings in accordance with regulation 136 and forwarded a record of those earnings to the host Board, or
- (b) was not required to certify their earnings in accordance with that regulation but the host Board has the figure that represents the non-GP provider's pensionable earnings for that scheme year.

(5) In the circumstances referred to in paragraph (4), contributions payable for the scheme year in question shall be those specified in column 2 of the relevant table in paragraph (14) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to—

- (a) the certified or final pensionable earnings from all non-GP provider sources, and
- (b) any additional pensionable earnings the non-GP provider is treated as having received during a break in service in accordance with regulation 14.

(6) If paragraph (4) does not apply to a non-GP provider in respect of a scheme year, that non-GP provider shall pay contributions at the rate in column 2 of the relevant table in paragraph (14), on the basis of whichever of the following the host Board considers the most appropriate in the circumstances—

- (a) an amount of the non-GP provider's earnings that has been agreed between the host Board on the one hand and the non-GP provider on the other hand;
- (b) an amount of the non-GP provider's earnings that corresponds to that non-GP provider's most recent certified or final pensionable earnings referred to in paragraph (4); or
- (c) an amount of such earnings that corresponds to the host Board's estimate of that non-GP provider's pensionable earnings from all non-GP provider sources for that year.

This is subject to paragraph (7).

(7) If paragraph (6) applies to a non-GP provider in respect of a scheme year and paragraph (4) (a) or (b) is subsequently satisfied in respect of that scheme year, that non-GP provider shall pay contributions at the rate determined in accordance with paragraph (5).

(8) A host Board may adjust a non-GP provider's contribution rate for any scheme year determined in accordance with paragraph (6)—

- (a) by agreement between the host Board on the one hand and the non-GP provider on the other hand, or
- (b) without such agreement, if the host Board is satisfied that pensionable earnings of the non-GP provider will exceed the amount used to determine the contribution rate in accordance with that paragraph.

(9) If a member is in non-GP provider service and concurrently in practitioner service in respect of which the member is liable to pay contributions in accordance with regulation 160, contributions payable in respect of the member's non-GP provider service shall be determined under this regulation and contributions payable in respect of the member's practitioner service shall be determined under regulation 161.

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

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

(12) Where paragraph (13) does not apply, a non-GP provider shall pay member contributions to the host Board.

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

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

<sup>F110</sup>(14) For the purposes of this regulation, “the relevant table” means—

- (a) in respect of the 2010-2011 and 2011-2012 scheme years, Table 1;
- (b) in respect of the 2012-2013 scheme year, Table 2.

**Table 1**

**Scheme years 2010-2011 and 2011-2012**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%

**Table 2**

**Scheme Year 2012-2013**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £26, 557	6.5%
£26,558 to £48,982	8%
£48,983 to £69,931	8.9%
£69,932 to £110,273	9.9%
£110,274 to any higher amount	10.9%]]



### Textual Amendments

- F109** Reg. 30 substituted (20.1.2011) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/420\)](#), regs. 1(2), **14**
- F110** Reg. 30(14) substituted (1.4.2012) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/78\)](#), regs. 1(2), **14**

### *Contributions by employing authorities*

#### [<sup>F11</sup>Contributions by employing authorities: general

**31.—(1)** The employing authority of a member who is an active member of this Section of the Scheme under this Part must contribute to the scheme, in respect of the pensionable pay, or as the case may be, pensionable earnings of that member, at the rate specified in paragraph (4) (“the employer’s standard rate”).

(2) In specifying the employer’s standard rate, the Department must—

- (a) obtain the consent of the Department of Finance and Personnel, and
- (b) take account of the advice of the Scheme actuary and the cost of providing for any increase in pensions under this Section of the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act (Northern Ireland) 1971 and Article 69 of the Social Security Pensions (Northern Ireland) Order 1975.

(3) If for any period a person holds more than one employment (whether under a contract of service or for services) with an employing authority in respect of which the person is an active member of the Scheme, this regulation and regulation 32 apply in respect of each of those employments as if it were the only employment held.

(4) The employer’s standard rate is 13.3%.

(5) In any particular case the Department may direct that, for the purposes of this Chapter, “employing authority” includes one or more of—

- (a) a successor, transmittee or assignee of an employing authority’s business or functions;
- (b) the last employing authority of a person to whom these Regulations apply.

(6) If a non-GP provider is—

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

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

This is subject to paragraph (7).

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

(8) If paragraph (13) of regulation 30 applies (but paragraph (6) of this regulation does not) and the employing authority referred to in regulation 30(13)—

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- (a) is not the host Board, that authority must pay employer’s standard rate contributions under this regulation to the host Board not later than the 7th day of the month following the month in which the earnings were paid;
  - (b) is the host Board, that Board must pay employer’s standard rate contributions under this regulation to the Department in respect of any pensionable earnings it pays to the non-GP provider.
- (9) Not later than the 19th day of the month following the month in which pensionable pay or, as the case may be, pensionable earnings are paid to a member, the employer’s standard rate contributions under this regulation must be paid to the Department—
- (a) in the case of a member other than a non-GP provider, by that member’s employing authority,
  - (b) in the case of a non-GP provider, by the host Board.]

#### Textual Amendments

**F111** Reg. 31 substituted (20.1.2011) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/420\)](#), regs. 1(2), **15**

#### Contributions by employing authorities: members becoming entitled to pensions under regulation 55

**32.**—(1) If a pension becomes payable to a member under regulation 55 (early retirement on termination of employment by employing authority), the employing authority must make a contribution to the Department in respect of—

- [<sup>F112</sup>(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—
  - (i) before any part of that pension is exchanged for a lump sum under regulation 58, and
  - (ii) in the case of a 2008 Section Optant, after that pension is reduced in accordance with regulation 136L;]
- (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 Article 69 of the Social Security Pensions (Northern Ireland) Order 1975 (so far as not already met by contributions made under regulation 31(1))<sup>F113</sup>; and
- (c) in the case of a 2008 Section Optant, the additional cost attributable to the early payment of the lump sum to be paid to such an Optant under regulation 136L.]

(2) If, on a pension under regulation 55 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 34, 36 or 37.

- (4) Any contributions payable under this regulation must be paid—
  - (a) except in a case within sub-paragraph (b), by a single payment made within one month of the date on which the pension under regulation 55 became payable, or

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- (b) if the Department agrees, by not more than 5 equal annual instalments, the first of which is to be paid within one month of the date on which the pension under regulation 55 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 Department 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).

#### Textual Amendments

- F112** Reg. 32(1)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), Pt. 3 reg. 22(2), reg. 1(2)
- F113** Reg. 32(1)(c) and word inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), Pt. 3 reg. 22(3), reg. 1(2)

#### Guarantees, indemnities and bonds

- 33.**—(1) This regulation applies if—
- (a) an employing authority fails to pay contributions in accordance with regulation 31 or 32, and
  - (b) the authority is—
    - (i) a GMS practice;
    - (ii) an APMS contractor; or
    - (iii) an OOH provider.
- (2) The Department may require the employing authority to have in force a guarantee, indemnity or bond which provides for payment to the Department, should that authority fail to meet them, of all future liabilities of the authority under—
- (a) this Part, or
  - (b) the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 <sup>M29</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 Department approves for the purpose.

#### Marginal Citations

- M29** S.R. 1999 No. 294

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### *Additional contributions to purchase additional pensions*

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

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

- (a) to increase by a specified amount the benefits payable to the member under Chapter 4 (members' retirement benefits) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three or six months under Chapter 5 (death benefits)), or
- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 5 (death benefits) in respect of the member.

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

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

- (a) deduct the member's contributions from the member's earnings, and
- (b) pay them to the Department 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 Department by the Scheme actuary for the scheme year in which the contributions are paid, be the amount of the contributions required to secure an increase in the member's pension of—

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

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

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

- (a) may specify different amounts for different descriptions of members, and
- (b) may be amended during a scheme year,

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

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

- (a) contributions made under regulation 36 (member's option to pay additional lump sum contributions to purchase additional pension), or
- (b) contributions made under regulation 37 (payment of additional lump sum contributions by employing authority),

may not exceed £5000 or such other amount as the Department may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 165 to 174).

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

- (a) is specified in the option,
- (b) begins with the pay period in respect of which the first contribution is made under the option,
- (c) is not less than 1 year nor more than 20 years, and
- (d) does not end later than the member's 65th birthday.

[<sup>F114</sup>(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.]

#### Textual Amendments

**F114** Reg. 34(9) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **23**

#### Effect of member being absent or leaving and rejoining [<sup>F115</sup>this Section of] the Scheme during the contribution option period

**35.**—(1) This paragraph applies if during the contribution option period a member who has exercised the option under regulation 34 is absent from work because of—

- (a) illness or injury,
- (b) maternity leave,
- (c) adoption leave,
- (d) paternity leave,
- (e) parental leave, or
- (f) a leave of absence of the kind mentioned in regulation 9(3).

(2) If paragraph (1) applies—

- (a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation 27, 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 27 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 34,
- (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 44.

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

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### Textual Amendments

**F115** Words in [reg. 35](#) heading inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

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

- 36.**—(1) An active member may opt to make a single lump sum contribution—
- (a) to increase by a specified amount the benefits payable to the member under Chapter 4 (members' retirement benefits) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three or six months under Chapter 5 (death benefits)), or
  - (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners or dependent children under Chapter 5 (death benefits) in respect of the member.
- (2) A member may only make a contribution under this regulation of an amount that is—
- (a) not less than the minimum amount, 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 Department by the Scheme actuary, the amount of the single contribution required at the time that the option is exercised to secure an increase in the member's pension of—
- (a) £250, or
  - (b) such other amount as the Department may for the time being determine.
- (4) A member may exercise the option under paragraph (1) more than once.
- (5) If a member exercises an option under paragraph (1)—
- (a) the additional contribution is payable by the member to the employing authority—
    - (i) by deduction from the member's earnings or otherwise, and
    - (ii) before the end of the period of 1 month beginning with the day on which the member is notified by the Department that the option is accepted, and
  - (b) the employing authority must pay it to the Department not later than the 19th day of the month following the month in which the earnings were paid or, as the case may be, the 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 34 (member's option to pay additional periodical contributions to purchase additional pension), or
  - (b) contributions made under regulation 37 (payment of additional lump sum contributions by employing authority),
- may not exceed £5000 or such other amount as the Department may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 165 to 174).

[<sup>F116</sup>(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.]

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### Textual Amendments

**F116** Reg. 36(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **24**

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

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

- (a) to increase by a specified amount the benefits payable to the member under Chapter 4 (members' retirement benefits) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three or six months under Chapter 5 (death benefits)), or
- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners or dependent children under Chapter 5 (death benefits) in respect of the member.

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

- (a) not less than the minimum amount (as defined in regulation 36(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 34 (member's option to pay additional periodical contributions to purchase additional pension), or
- (b) contributions made under regulation 36 (member's option to pay lump sum contribution to purchase additional pension),

may not exceed £5000 or such other amount as the Department may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 165 to 174).

(5) A contribution under this regulation must be paid by the employing authority to the Department within one month of the date on which the authority gave the Department notice under regulation 38(2).

[<sup>F117</sup>(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.]

### Textual Amendments

**F117** Reg. 37(6) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **25**

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### **Exercise of options under regulations 34, 36 and 37**

**38.**—(1) A member exercising an option under regulation 34 or 36 must do so by giving notice in writing to the employing authority, giving such information as may be required and must, at the same time, provide the Department with a copy of that notice.

(2) An employing authority exercising an option under regulation 37 must do so by giving notice in writing to the Department, giving such information as may be required.

(3) An option under regulation 34, 36 or 37 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 34 or 36 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 37 on the date on which the Department receives the authority's notice under paragraph (2).

(5) The Department may refuse to accept an option exercised under regulation 34, 36 or 37 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 34, there is no reason why the member's health should prevent the member from paying the contributions for the whole contribution period.

(6) If the Department refuses to accept such an option—

(a) the Department must give notice in writing of that fact—

(i) in the case of an option exercised under regulation 34 or 36, to the member, and

(ii) in the case of an option exercised under regulation 37, 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 36 or 37 had not been exercised if—

(a) in the case of an option under regulation 36, the payment is not received by the employing authority—

(i) before the end of the period of 1 month beginning with the day on which the Department notifies the member of the acceptance of the option, or

(ii) if it is earlier, on or before the member's 65th birthday, and

(b) in the case of an option under regulation 37, the payment is not received by the Department—

(i) before the end of the period of one month beginning with the day on which the authority gave the Department notice under paragraph (2), or

(ii) if it is earlier, on or before the member's 65th birthday.

### **Cancellation of options under regulation 34**

**39.**—(1) A member may cancel an option under regulation 34(1) by giving the employing authority notice in writing.

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



(3) If it appears to the Department that the requirement in regulation 34(7) (overall maximum) will not be met if the member continues to make periodical contributions under an option exercised under regulation 34, the Department may cancel the option by giving the member notice in writing.

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

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

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

- (a) an option is exercised by a member under regulation 34 and all the contributions to be made under the option are made,
- (b) an option is exercised by a member under regulation 36 or by a member's employing authority under regulation 37 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 43(revaluation of increases bought under options: members' pensions).

(3) Paragraph (2) is without prejudice to any increase or reduction falling to be made in the total amount of the member's pension under Chapter 4 (members' retirement benefits) [<sup>F118</sup>or Chapter 10 of this Part] as a result of the member becoming entitled to payment of the pension before or after reaching the age of 65 (see regulations 47 to 49 [<sup>F118</sup>and 136U] ).

(4) In the case of an option under regulation 34(1)(b), 36(1)(b) or 37(1)(b), any pension payable under Chapter 5 (death benefits) in respect of the member is increased by the appropriate amount.

(5) In paragraph (4), subject to regulations 41 and 42(3), “the appropriate amount” means—

- (a) in the case of a pension under regulation 67 the amount of which is determined under regulation 69 (active members) or regulation 71 (deferred members), 37.5% of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3)),
- (b) in the case of a pension under regulation 67 the amount of which is determined under regulation 70 (pensioner members), 37.5% of the amount of the increase in the member's pension as a result of the option,
- (c) in the case of a pension under regulation 74 the amount of which is determined under regulation 76 (active members) or regulation 78 (deferred members), the appropriate fraction (within the meaning of regulation 76 or, as the case may be, regulation 78) of 75% of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3)), and
- (d) in the case of a pension under regulation 74 the amount of which is determined under regulation 77 (pensioner members), the appropriate fraction (within the meaning of that regulation) of 75% of the amount of the increase in the member's pension as a result of the option.

(6) Except as provided in regulation 49, no separate claim is required as respects any additional pension payable by virtue of this regulation.

(7) This regulation is subject to regulation 41.

(8) For the effect of the options under regulation 34 where this regulation does not apply, see regulation 42 (effect of part payment of periodical contributions).

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(9) Paragraph (10) applies only to an option under regulations 34(1)(a), 36(1)(a) or 37(1)(a), where a pension is to be paid for either three or six months at the same rate as the member's pension was being paid at the date of that member's death.

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

[<sup>F119</sup>(11) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.]

#### Textual Amendments

**F118** Words in [reg. 40\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **26(2)**

**F119** [Reg. 40\(11\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **26(3)**

#### Effect of death or early payment of pension after option exercised under regulation 34, 36 or 37

**41.—**(1) If a member in respect of whom an option under regulation 34, 36 or 37 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 34 or 36, to the member's personal representatives, and
  - (ii) in the case of an option under regulation 37, to the employing authority which made the contribution, and
- (b) regulation 40 (4) does not apply.

(2) If a member in respect of whom an option under regulation 34 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 40 (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 34, 36 or 37 has been exercised becomes entitled to a pension under regulation 52 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 40(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 34 or 36, to the member, and
  - (ii) in the case of an option under regulation 37, to the employing authority which made the contribution.

(4) If a member in respect of whom an option under regulation 34 has been exercised becomes entitled to a pension under regulation 52 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 40(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 34, 36 or 37 has been exercised—
- (a) becomes entitled to a pension under regulation 48, 54 or 55, or
  - (b) becomes entitled to a pension under regulation 49 before reaching the age of 65,
- the increase in the member's pension under Chapter 4 (members' retirement benefits) which would otherwise be due under regulation 40(2) or regulation 42 is reduced.
- (6) The amount of the reduction is such amount as the Department determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the increase before the member reaches 65.
- (7) This regulation is subject to regulation 42.

### **Effect of part payment of periodical contributions**

- 42.**—(1) This regulation applies if—
- (a) the full number and amount of contributions due under an option under regulation 34 for the whole contribution option period are not made, and
  - (b) regulation 41(1) to (4) does not apply.
- (2) The increase in the member's pension under Chapter 4 (members' retirement benefits) is the appropriate proportion of the increase that would have been made under regulation 40(2) if the full number and amount of contributions had been made (but taking account of regulation 41(5) if that applies).
- (3) In the case of an option under regulation 34(1)(b), the increase in any benefit payable under Chapter 5 (death benefits) in respect of the member is the appropriate proportion of the increase that would have been made under regulation 40(4) if the full number and amount of contributions had been made (but taking account of regulation 41(5) if that applies).
- (4) For the purposes of paragraphs (2) and (3), the appropriate proportion is calculated in accordance with such method as the Scheme actuary may determine and specify in guidance given to the Department.
- (5) In making a determination under paragraph (4), the Scheme actuary must have regard to—
- (a) the proportion that the total contributions paid bears to the full amount of contributions due under an option under regulation 34 for the whole contribution option period, and
  - (b) the preservation requirements.
- [<sup>F120</sup>(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 136D.]

#### **Textual Amendments**

**F120** Reg. 42(6) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), 27

### **[<sup>F121</sup>Revaluation of increases bought under options: members' pensions**

- 43.**—(1) Where an option under regulation 34, 36 or 37 has been exercised, the final amount of the increase in a member's pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.
- (2) Where the increase in pension is in respect of an option that was exercised less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (4).

*Status: Point in time view as at 01/04/2012.*

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(3) Where the increase in pension is in respect of an option that was exercised 2 or more months before the increase in pension becomes payable, the final amount is calculated in accordance with paragraph (5).

(4) The calculation referred to in paragraph (2) is as follows—

Step 1 – Calculate the basic amount of the increase in accordance with regulations 40 to 42, to find the Step 1 amount.

Step 2 – Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act (Northern Ireland) 1971 on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.

Step 3 – Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.

Step 4 – Divide the Step 1 amount by the Step 3 factor, to find the final amount referred to in paragraph (1).

(5) The calculation referred to in paragraph (3) is as follows—

Step 1 – Calculate the basic amount of the increase in accordance with regulations 40 to 42, to find the Step 1 amount.

Step 2 – Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.

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

Step 4 – Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.

Step 5 – Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act (Northern Ireland) 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.

Step 6 – Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.

Step 7 – Divide the Step 4 amount by the Step 6 factor, to find the final amount referred to in paragraph (1).

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

#### **Textual Amendments**

**F121** Reg. 43 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\), Pt. 3 reg. 23, reg. 1\(2\)](#)

### *Repayment of contributions*

#### **Repayment of contributions**

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

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

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- (2) This paragraph applies if—
- (a) a person who is not a pensioner member ceases to be an active member and does not continue to be, or become, an active member for the purposes of Part 3 within 12 months of ceasing officer service,
  - (b) the person does not fall within sub-paragraph (a), (b), (c) or (d) of regulation 45(2) (former members entitled to a pension),
  - (c) paragraph (1)(b) does not apply, and
  - (d) the person claims repayment of contributions under this regulation by applying in writing to the Department.
- (3) If paragraph (1)(b) applies, the person is entitled to be paid the amount to which the person is entitled under Chapter V of Part IV of the 1993 Act, less—
- (a) such part of any contributions equivalent premium paid in respect of the person as is permitted by or under section 57 of the 1993 Act, and
  - (b) an amount equal to the income tax payable under section 205 of the Finance Act 2004 (short service refund lump sum charge) as a result of the repayment.
- (4) If paragraph (2) applies, the person is entitled to be paid an amount equal to the sum of the contributions made by the person under this Chapter, less the amounts mentioned in paragraph (3) (a) and (b).
- (5) If a repayment is made under this regulation, the member's rights under <sup>F122</sup>this Section of] the Scheme are extinguished unless the person or the person's spouse or civil partner is entitled to a guaranteed minimum pension under <sup>F122</sup>this Section of] the Scheme and a contributions equivalent payment has not been paid.
- (6) A person—
- (a) who is entitled to a repayment of contributions under this regulation, and
  - (b) whose pensionable service did not cease because the person's employment was terminated at the person's request,
- is entitled to interest on the amount of the repayment unless the person's pensionable service ceased because the person's employment was terminated by reason of misconduct or inefficiency.
- (7) Subject to paragraphs (8) and (9), the interest is calculated on a compound basis at the rate of 2.5% per year, with yearly rests, for the period starting on 1st April after the contributions were paid and ending with the day the member leaves pensionable service.
- (8) Paragraph (7) does not apply if paragraph (1)(b) applies and the person is entitled to a greater amount of interest under Chapter V of Part IV of the 1993 Act.
- (9) So far as the contributions were paid under another scheme and were included in a transfer payment to <sup>F123</sup>this Section of] the Scheme—
- (a) interest for the period before the transfer payment was made is calculated in accordance with the Scheme making the transfer payment (subject to any provision made in any statutory provision applicable to the transfer), and
  - (b) paragraph (7) does not apply as respects that period.

#### Textual Amendments

**F122** Words in [reg. 44\(5\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

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**F123** Words in reg. 44(9) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

## CHAPTER 4

### MEMBERS' RETIREMENT BENEFITS

#### *Entitlement to pensions*

#### **Normal retirement pensions**

**45.—**(1) Subject to paragraph (2), regulation 57 (exceptions to requirement that HSC 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 HSC employment and has claimed payment of the pension, or
  - (ii) will reach the age of 75 on the next day.

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

- (a) the member is entitled to count at least 2 years of qualifying service in respect of the relevant service, or
- (b) a transfer value payment has been accepted by the Scheme during the relevant service under Chapter 6 (transfers), otherwise than from an occupational pension scheme,
- (c) the member is entitled to a pension under this regulation in respect of any previous period of pensionable service, or
- (d) the member has reached the age of 65.

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

(4) The 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 125, takes effect from the date the claim is received by the Department.

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

[<sup>F124</sup>(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.]

### Textual Amendments

**F124** Reg. 45(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **28**

### Pension credit members

**46.**—(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.

[<sup>F125</sup>This is subject to paragraphs (5) and (8)]

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

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

[<sup>F126</sup>(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—

- (a) reached the age of 55; and
  - (b) claimed the payment of the pension.
- (6) The amount of the annual pension under paragraph (5)—
- (a) is first calculated as mentioned in paragraph (3); and
  - (b) then that amount is reduced by such amount as the Department determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

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

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

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004;
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in such employment due to mental or physical infirmity; and
- (c) has claimed the pension.

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

(10) For the purpose of paragraph (8), the Department may require whatever medical evidence that it considers necessary.]



**Status:** Point in time view as at 01/04/2012.

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### Textual Amendments

- F125** Words in [reg. 46\(2\)](#) added (with effect in accordance with [reg. 1\(3\)\(b\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **21(2)**
- F126** [Reg. 46\(5\)-\(10\)](#) added (with effect in accordance with [reg. 1\(3\)\(b\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **21(3)**

### Late payment of pension with actuarial increase

**47.—(1)** This regulation applies if a member becomes entitled to immediate payment of pension under regulation 45 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 58) as is attributable—

- (a) to the member's pensionable service before that age, and
- (b) to any contributions paid under regulation 34, 36 or 37 before that age,

is increased.

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

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

[<sup>F127</sup>(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136U.]

### Textual Amendments

- F127** [Reg. 47\(5\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **29**

### Early payment of pensions with actuarial reduction

**48.—(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 45(2)(a) or (b),
- (c) has ceased to be employed in HSC employment, and
- (d) has claimed payment of the pension.

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

- (a) is first calculated as mentioned in regulation 45(4) (and, if additional pension is payable, in accordance with regulation 40(2) or 42(2)), and



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- (b) then that amount is reduced by such amount as the Department determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.
- (3) A claim under paragraph (1) must be made by notice in writing in such form as the Department requires and takes effect—
- (a) in the case of a deferred member, from the date specified in the claim as the date on which the pension is to become payable,
- (b) in the case of an active member [<sup>F128</sup>or a non-contributing member] , from the day immediately following the day on which the member ceased to be employed in HSC employment.
- (4) A member shall not be entitled to a pension under this regulation if the Department determines, having taken advice from the Scheme actuary, that the pension, as reduced under paragraph (1), would be insufficient to meet its liability to provide a guaranteed minimum pension.
- [<sup>F129</sup>(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.]

#### Textual Amendments

**F128** Words in [reg. 48\(3\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **22**

**F129** [Reg. 48\(5\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **30**

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

- 49.**—(1) An active member [<sup>F130</sup>or a non-contributing member] may exercise an option under this regulation if—
- (a) the member has reached the age of 55 and continues to be employed in the employment in which the member is an active member or where the member has more than one such employment, in at least one of those employments,
- (b) the member would be entitled to a pension for life, by virtue of [regulation 45 \(1\)\(b\)\(i\)](#) and not [regulation 45 \(1\)\(b\)\(ii\)](#), 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 subparagraph (a) change, and
- (d) as a result the annual rate of the member's pensionable pay is reduced to 90% or less of the amount of the member's pensionable pay during the period of 12 months ending with the option day.
- (2) If the member was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(d), that paragraph applies as if the member's pensionable pay during that period were—

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

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 Department requires and must be accompanied by a statement in writing by the employing authority, or employing authorities, that the conditions in paragraph (1)(c) and (d) are met.

(4) The option must specify—

- (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 45 if the member had ceased to be employed in one or more employments on the option day (disregarding any additional pension, but subject to any increase under regulation 47),
- (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 48 if the member had ceased to be employed in one or more employments on the option day (disregarding any additional pension), and
- (c) if the option specifies that the member claims immediate payment of additional pension, the additional pension—
  - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 47 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 48 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 58 and disregarding any additional pension)—
  - (i) is not less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional pension), and
  - (ii) taken together with any such increase to which the member becomes entitled as a result of the option (before any such commutation), is not less than 0.05% of the member's lifetime allowance on the option day,
- (b) the percentage of the pension (other than additional pension) in respect of which the member does not require immediate payment is not less than the amount of the pension payable by reference to 20% of the member's pensionable service at the end of the option day (disregarding any additional pension), and
- (c) that pensionable service referred to in sub-paragraph (b) is at least 1 year, within the meaning of regulation 8 in the case of a part-time member, at the end of that date.

(7) The option under this regulation may only be exercised on no more than two occasions, and the Department shall take advice from the Scheme actuary regarding—

- (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option),
- (b) any benefits to be paid after the exercise of any second option, and
- (c) the final payment.

(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 <sup>F130</sup>or a non-contributing member]as respects—
  - (i) the pensionable service after that day in which the member continues, and
  - (ii) so much of the pensionable service as respects which the member is an active member <sup>F130</sup>or a non-contributing member] on the option day as does not fall within sub-paragraph (a) (“the unspecified service”), and
- (c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.

<sup>F131</sup>(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.]

#### Textual Amendments

**F130** Words in [reg. 49\(1\)\(9\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **23**

**F131** [Reg. 49\(10\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **31**

#### Increase in pensionable pay following exercise of option under regulation 49

**50.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation 49—

- (a) during the period of 12 months beginning with the day after the option day the terms on which the member holds the employment or employments referred to in regulation 49 (1) (a) change again, and
- (b) as a result the member's pensionable pay in that employment or those employments is increased to more than 90% of the member's pensionable pay during the period of 12 months ending with the option day, or
- (c) following an increase referred to in sub-paragraph (b), 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.

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(2) In the circumstances referred to in—

- (a) paragraph (1)(b), the amount of the member's pension mentioned in sub-paragraphs (a) and (b) of regulation 49(5) 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)(c), subject to any adjustments in accordance with sub-paragraph (c), the member shall again be entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a) and (b) of that regulation as from the first pension day immediately following the day on which the level of the member's engagement reduced,
- (c) where sub-paragraph (b) applies, before restoring the payment of a pension the Department shall have regard to the advice of the Scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with sub-paragraph (a).

(3) If the member was not an active member <sup>[F132]</sup>or a non-contributing member] during the whole of the period of 12 months mentioned in paragraph (1)(b), that paragraph applies as if the member's pensionable pay during that period were—

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

where—

PP is the member's pensionable pay for the part of that period during which the member was an active member <sup>[F132]</sup>or a non-contributing member] , and

N is the number of days in that period on which the member was an active member <sup>[F132]</sup>or a non-contributing member] .

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

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

(5) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further employment or employments in which the member is an active member <sup>[F133]</sup>or a non-contributing member] of <sup>[F134]</sup>this Section of] the Scheme—

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

(6) In this regulation “the option day” has the same meaning as in paragraph (8) of regulation 49.

#### Textual Amendments

**F132** Words in [reg. 50\(3\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [24](#)

- F133** Words in reg. 50(5) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), 24
- F134** Words in reg. 50(5) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### Application of regulations 49 and 50 where concurrent part-time employments held

**51.**—(1) This regulation provides for the application of regulations 49 and 50 if a person is an active member [<sup>F135</sup>or a non-contributing member] in two 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 49(1) for sub-paragraph (d) substitute—

“(d) as a result of that change the sum of the annual rate of the member's pensionable pay in that employment and every other employment held by the member on the option day is reduced to 90% or less of the sum of—

- (i) the member's pensionable pay in the employment during the period of 12 months ending with the option day, and
- (ii) the member's pensionable pay during that period in every other employment held by the member on the option day.”

(4) In regulation 49(2)—

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

(5) In regulation 50(1) for sub-paragraph (b) substitute—

“(b) as a result the annual rate of the member's pensionable pay in that employment is increased to more than 90% of the sum of—

- (i) the member's pensionable pay in the employment during the period of 12 months ending with the option day, and
- (ii) the member's pensionable pay during that period in every other employment held by the member on the option day.”

(6) In regulation 50(3)—

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

(7) For regulation 50(4) substitute—

“(4) If, in the opinion of the Department, 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

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(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 50(2)(a), in the circumstances described in regulation 50(1)(b), and
- (b) the member's pensionable pay does not reduce in the manner described in regulation 50(1)(c),

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

- (i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation 58,
- (ii) take advice of the Scheme actuary.

#### Textual Amendments

**F135** Words in [reg. 51\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **25**

#### Early retirement on ill-health (active members <sup>F136</sup> and non-contributing members )

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

(2) An active member <sup>F137</sup> or a non-contributing member] who has not reached the age of 65 and who has ceased to be employed in HSC employment is entitled to immediate payment of a tier 1 ill-health pension that is payable for life if—

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

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

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

(4) The annual amount of a tier 1 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 45(4).



(5) The annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 45(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;

[<sup>F138</sup>(b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if—

(i) the member's pensionable service before and after the break is treated separately under regulation 110, or

(ii) the member's pensionable service in respect of an earlier service credit is treated separately under regulation 136G.]

(6) In this regulation, subject to paragraph (7), “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 8 (meaning of “pensionable service”: part-time service), the enhancement period that would apply apart from this paragraph is reduced by multiplying it by the fraction—

TPSa

TPSn

where—

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

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

(8) In this regulation “the member's assumed service” means, subject to paragraph (9), 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 (5) would cause a member's pensionable service to exceed the limit of 45 years provided for in regulation 7 (3), the amount of any excess will be reduced accordingly.

(10) This regulation is subject to—

(a) regulation 112 (effect of re-employment on tier 2 ill-health pensions), and

(b) regulation 113 (re-employed tier 1 ill-health pensioners).

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

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

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

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

*Status: Point in time view as at 01/04/2012.*

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

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

(14) The factors to be taken into account for paragraph (12) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Department considers appropriate.

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

- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
- (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
  - (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (d) such type and period of training which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such training is undergone) having due regard to the member's—
  - (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience; and
- (e) any other matter which the Department considers appropriate.

(16) The factors to be disregarded for paragraph (13) are—

- (a) the member's personal preference for or against engaging in any particular employment; and



(b) the geographical location of the member.

(17) For the purpose of this regulation—

“appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Department considers—

- (a) that it would be reasonable for the member to refuse,
- (b) would provide no benefit to restoring the member's capacity for—
  - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a), or
  - (ii) engaging in regular employment of like duration under paragraph (3)(a), before the member reaches age 65, or
- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;

[<sup>F139</sup>“permanently” means—

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

“regular employment of like duration” means—

- (a) in the case of a non-GP provider, such employment as the Department considers would involve a similar level of engagement to the member's current pensionable service as a non-GP provider; and
- (b) in all other cases, where prior to retiring from employment that is pensionable the member was employed—
  - (i) on a whole-time basis, regular employment on a whole-time basis;
  - (ii) on a part-time basis, regular employment on a part-time basis,regard being had to the number of hours, half-days and sessions the member worked in that employment.

[<sup>F140</sup>(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 136L and 136N to 136R.]

[<sup>F141</sup>(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 136ZA.]

#### Textual Amendments

**F136** Words in [reg. 52 heading](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **26(2)**

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- F137** Words in reg. 52(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **26(3)**
- F138** Reg. 52(5)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **32(2)**
- F139** Words in reg. 52(17) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **32(3)**
- F140** Reg. 52(18) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **32(4)**
- F141** Reg. 52(19) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 24**, reg. 1(2)

## Re-assessment of entitlement to an ill-health pension determined under regulation 52

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

- (a) in the opinion of the Department a member meets the condition in regulation 52(2)(a), and
- (b) at the time the member is awarded a pension under that regulation the Department gives the member notice in writing that the member's case may be considered once within a period of three years commencing with the date of that award to determine whether the member meets the condition in regulation 52(3)(a) at the date of such a consideration.

[<sup>F142</sup>(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Department for a review of whether the member subsequently meets the condition in regulation 52(3)(a) if—

- (a) the member makes the application in writing—
  - (i) within three years of the date of issue of the notice, or
  - (ii) in the case of a member who engages in further HSC employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
  - (i) relating to whether the condition in regulation 52(3)(a) is satisfied at the date of the Department's review, and
  - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 52(2)(a);
- (c) no previous application for a review has been made under this paragraph; and
- (d) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 113.]

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

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- (a) ceases to be entitled to a tier 1 ill-health pension; and
  - (b) becomes entitled to a tier 2 ill-health pension under regulation 52 , which shall be calculated as if paragraph (8) of that regulation included the words “from the date of the Department's determination under regulation 53” after “continued in service”.
- [<sup>F143</sup>(4) In the case of a 2008 Section Optant, this regulation is subject to regulations 136P and 136Q.]

#### Textual Amendments

- F142** Reg. 53(2) substituted (with effect in accordance with reg. 1(4)(e) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **33(2)**
- F143** Reg. 53(4) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **33(3)**

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

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

- (a) in the opinion of the Department the member suffers from physical or mental infirmity as a result of which the member is [<sup>F144</sup>permanently] incapable of engaging in regular employment of like duration, and
- (b) the member has claimed the pension.

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

- (a) in the opinion of the Department the member—
  - (i) does not fall within paragraph (1)(a), but
  - (ii) suffers from physical or mental [<sup>F145</sup>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 45(4).

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

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

(6) The factors to be taken into account for paragraph (4) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member's—

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- (i) mental capacity; and
    - (ii) physical capacity;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity, irrespective of whether such rehabilitation is undergone; and
  - (d) any other matter which the Department considers appropriate.
- (7) The factors to be taken into account for paragraph (5) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,
 irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (d) such type and period of training which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such training is undergone) having due regard to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience;
  - (e) any other matter which the Department considers appropriate.
- (8) The factors to be disregarded for paragraph (5) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (9) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Department considers—
- (a) that it would be reasonable for the member to refuse,
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii), or
    - (ii) engaging in regular employment of like duration under paragraph (1)(a), before the member reaches age 65, or

- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;
- “permanently” means the period until age 65; and
- “regular employment of like duration” means—
- (a) in the case of a member who was a non-GP provider, such employment as the Department considers would involve a similar level of engagement to the member's pensionable service as a non-GP provider immediately before that service ceased; and
- (b) in all other cases, where prior to leaving employment that was pensionable the member was employed—
- (i) on a whole-time basis, regular employment on a whole-time basis;
- (ii) on a part-time basis, regular employment on a part-time basis,
- regard being had to the number of hours, half-days and sessions the member worked in that employment.

[<sup>F146</sup>(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.]

#### Textual Amendments

- F144** Word in reg. 54(1)(a) inserted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **34(2)** (with reg. 89)
- F145** Word in reg. 54(2)(a)(ii) substituted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **34(3)** (with reg. 89)
- F146** Reg. 54(10) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **34**

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

**55.**—(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 [<sup>F147</sup>or a non-contributing member] is terminated by the member's employing authority and the member has ceased to be employed in HSC 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 Department certifies 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

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(e) the member has claimed payment of the pension.

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

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

(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 Department within 6 months of the employment terminating, and

(b) must contain such information as the Department may from time to time require.

(6) If the member—

(a) has received a related payment in respect of the cessation of the employment,

(b) the terms and conditions relating to the employment require that payment to be reduced to take account of the additional contributions the employing authority must make to the Department in accordance with regulation 32, 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 (Northern Ireland) Order 1996<sup>M30</sup>, or

(b) a corresponding payment under the arrangements of the Whitley Councils for the Health Services.

(8) This regulation does not apply to practice staff.

[<sup>F148</sup>(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.]

#### Textual Amendments

**F147** Words in [reg. 55\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **28**

**F148** [Reg. 55\(9\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **35**

### Marginal Citations

M30 S.I. 1996/1919 (N.I. 16)

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

- 56.**—(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 Department 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 [F149this Section of] the Scheme in accordance with this regulation as follows—
- (a) the member is treated as a deferred member of [F149this Section of] the Scheme as respects the earlier service, and
  - (b) if the member is an active member of [F149this Section of] the Scheme in the later service, for the purposes of this Chapter the member is treated as respects the later service as if the member became an active member for the first time on the day that service began.
- (4) But nothing in paragraph (3) prevents the member's earlier service and later service counting as a single continuous period for the purposes of regulation 10 (qualifying service).
- (5) If the member's pensionable service is to be increased under regulation 52(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 [F150this Section of] the Scheme in respect of the earlier service or the later service, or
  - (b) if it is earlier, at the time of the member's death,
- in the opinion of the Department 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 Department in such form as the Department requires before the end of the period of 3 months beginning with the first day of the later service.
- (9) In this regulation—
- “the earlier service” means—



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- (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.

#### Textual Amendments

**F149** Words in [reg. 56\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F150** Words in [reg. 56\(7\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Exceptions to requirement that HSC employment must have ceased

**57.—(1)** A member is not prevented from becoming entitled to a pension under regulation 45 in respect of relevant service because of continuing in HSC employment if paragraph (2) applies.

(2) This paragraph applies if—

- (a) the member is an active member [<sup>F151</sup>or a non-contributing member] in the HSC 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 55 in respect of pensionable service in an employment (“the old employment”) because of continuing in HSC employment if paragraph (5) applies.

(5) This paragraph applies if—

- (a) before the termination of the old employment the member held two or more HSC employments concurrently, and
- (b) the member elected to take benefits under regulation 55 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 7 (re-employment and rejoining [<sup>F152</sup>this Section of] the Scheme),
- (b) Chapter 8 (abatement).



### Textual Amendments

**F151** Words in reg. 57(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **29**

**F152** Words in reg. 57(6)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

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

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

**58.**—<sup>F153</sup>(1) A member (other than a pension credit member whose rights under <sup>F154</sup>this Section of] the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the Finance Act 2004) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.]

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

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

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

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

(6) If the member has a guaranteed minimum under section 10 of the 1993 Act in relation to the whole or part of a pension, paragraph (1) only applies to so much of the pension as exceeds that guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the Scheme actuary.

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

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

<sup>F155</sup>This is subject to paragraphs (8) and (9).]

<sup>F156</sup>(8) If the pension is an ill-health pension under regulation 52, the option under this regulation may only be exercised by giving notice in writing to the Department in such form as it requires—

- (a) where the member is awarded—
  - (i) a tier 1 pension under paragraph (2) of that regulation, at the time of claiming that tier 1 pension,
  - (ii) a tier 2 pension under paragraph (3) of that regulation, at the time of claiming that tier 2 pension; or

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- (b) before such later time as the Department specifies in writing.
- (9) If the pension is a tier 2 ill-health pension under regulation 53, in substitution for a tier 1 ill-health pension under regulation 52, the option under this regulation may only be exercised—
- (a) in relation to the difference between the tier 1 pension that ceases to be payable in accordance with paragraph (3) of regulation 53 and the tier 2 pension to which the member becomes entitled under that paragraph; and
- (b) by giving notice in writing to the Department in such form as it requires—
- (i) at the time of award of the tier 2 pension under that paragraph, or
- (ii) before such later time as the Department specifies in writing.]
- [<sup>F157</sup>(10) In the case of a 2008 Section Optant, this regulation is subject to paragraph (4) of regulation 136H and regulation 136L.]

#### Textual Amendments

- F153** Reg. 58(1) substituted (with effect in accordance with reg. 1(3)(c) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **30(2)**
- F154** Words in reg. 58(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F155** Words in reg. 58(7) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **30(3)**
- F156** Reg. 58(8)(9) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **30(4)**
- F157** Reg. 58(10) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **36**

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

**59.**—(1) An active member [<sup>F158</sup>, non-contributing member], a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the Department is satisfied that the conditions for the lump sum to be a serious ill-health lump sum for the purposes of the Finance Act 2004 will be met (see paragraph 4 of Schedule 29 to that Act).

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

- (a) regulation 45 (normal retirement pensions),
- (b) regulation 46 (pension credit members' pensions),
- (c) regulation 52 (early payment of pensions: ill-health), or
- (d) regulation 54 (early retirement on ill-health (deferred members)).
- (3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 45 or 46, before or at the time when the pension becomes payable,
  - (b) in the case of a pension payable under regulation 52 or 54, before the pension becomes payable to the member.
- (4) An active member [<sup>F159</sup>or a non-contributing 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 58 if at the appropriate time the member had become entitled to a pension under regulation 45, and
  - (b) the total annual amount of the pension to which the member would have been entitled under regulation 45 after exercising that option, multiplied by 5.
- [<sup>F160</sup>(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—
- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 58 at the appropriate time; and
  - (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 46 after exercising that option, multiplied by 5.]
- (6) An active member [<sup>F161</sup>or a non-contributing member] entitled to a pension under regulation 52 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 58 at the appropriate time, and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 52 after exercising that option, multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 54 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 58 at the appropriate time, and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 54 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 52 or, as the case may be, regulation 54 would otherwise first be due.
- (9) In this regulation references to the “annual amount” of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act (Northern Ireland) 1971, calculated as at the appropriate time.
- (10) The option under this regulation may only be exercised by notice in writing to the Department in such form as the Department requires.

#### **Textual Amendments**

**F158** Words in [reg. 59\(1\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and](#)

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Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **31(2)**

**F159** Words in reg. 59(4) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **31(3)**

**F160** Reg. 59(5) substituted (with effect in accordance with reg. 1(3)(d) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **31(4)**

**F161** Words in reg. 59(6) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **31(5)**

*Pension debit members and pension credit members*

**[<sup>F162</sup>Reduction in pension debit member’s benefits**

**60**

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

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

**Textual Amendments**

**F162** Reg. 60 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **37**

**Pension credit member's rights**

**<sup>F163</sup>61. ....**

**Textual Amendments**

**F163** Reg. 61 omitted (with effect in accordance with reg. 1(3)(e) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **32**

*Allocation*

**Election to allocate pension**

**62.**—(1) A member may elect to allocate a part of the annual amount of the member's pension under [<sup>F164</sup>this Section of] the Scheme for the provision of a pension after the member's death for

a single person who is the member's spouse or civil partner or another person who is the member's dependant within the meaning of paragraph 15 of Schedule 28 to the Finance Act 2004 if conditions A and B are met.

(2) Condition A is that the member has not become entitled to the payment of any pension under <sup>F164</sup>this Section of] the Scheme other than a pension payable under regulation 49 (partial retirement: members aged at least 55).

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

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

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

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

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

- (a) the allocated annual pension exceeding the member's unallocated relevant annual pension,
- (b) the allocated pension exceeding such amount as the Department may determine for the purposes of this paragraph, after consultation with the Scheme actuary, having regard to any restrictions imposed under Part 4 of the Finance Act 2004, or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 128 (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 <sup>F165</sup>this Section of] the Scheme.

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

(8) If a member—

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

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

(9) References in this regulation to the member's relevant pension, in relation to any pension, are references to so much of the pension as would be payable if the member had exercised the option under regulation 58 so as to obtain the maximum lump sum possible.

#### Textual Amendments

**F164** Words in [reg. 62\(1\)\(2\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F165** Words in [reg. 62\(6\)\(c\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

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## **Procedure for election under regulation 62**

- 63.**—(1) An election under regulation 62 in respect of a member's pension must be made—
- (a) at the time when the member claims the pension or, if the member does not become entitled to the pension at that time, when the member does become so entitled, or
  - (b) if the member is in pensionable service after reaching the age of 65, at any time after reaching that age and before reaching the age of 75.
- (2) The election must be made by giving notice in writing to the Department.
- (3) The notice must be in such form and contain such information as the Department requires.
- (4) Subject to paragraphs (6) and (7), an election under regulation 62 takes effect once it has been accepted by the Department.
- (5) The election may not be withdrawn, amended or revoked after it has taken effect.
- (6) The election does not take effect if—
- (a) the member or the person in whose favour the election was made (“the beneficiary”) dies on or before the day on which the Department accepts it, or
  - (b) the Department is not satisfied that at the time when the election is made the member is in good health.
- (7) The election is treated as not having taken effect if the beneficiary dies before the member is notified in writing that the Department has accepted the election.

## **Effect of allocation**

- 64.**—(1) If an election under regulation 62 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 62.
- (2) An allocation is disregarded for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither—
- (a) the member's spouse or civil partner on the date when the member becomes entitled to the pension or dies, nor
  - (b) a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to the Finance Act 2004 when the member dies.
- (3) References in this Part to pensions under this Chapter do not include pensions under this regulation except where the context otherwise requires.
- (4) Any such pension is payable in addition to any pension payable to the beneficiary in respect of the member's death under Chapter 5 (death benefits).

### *Dual capacity membership*

## **Dual capacity membership**

- 65.**—(1) This paragraph applies if a member is—
- (a) a member of [<sup>F166</sup>this Section of] the Scheme of two or more of the kinds specified in paragraph (2),

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- (b) a pensioner member in respect of two or more pensions, or
  - (c) a deferred member in respect of two or more pensions.
- (2) The kinds of member are—
- (a) an active member [<sup>F167</sup>or a non-contributing member] ,
  - (b) a deferred member,
  - (c) a pensioner member, and
  - (d) a pension credit member.
- (3) If paragraph (1) applies, the general rule is that—
- (a) benefits are payable to the member under this Chapter (or to any person to whom the member has opted to allocate pension under regulation 62) as if the member were two or more members of the kinds in question (so that two or more pensions or lump sums are payable in respect of the one member), and
  - (b) the amounts payable are determined accordingly.
- (4) The rule in paragraph (3) is subject to any indication to the contrary and, in particular, does not affect the interpretation of—
- (a) regulation 7(3) (45 year limit),
  - (b) regulation 49(9) in a case where a member is both an active member [<sup>F168</sup>or a non-contributing member] and a pensioner member by virtue of that regulation,
  - (c) regulation 56 (option to have periods of service treated separately where pay is reduced),
  - (d) regulation 111 (exception to general rule in regulation 110 about separate treatment of pay and service),
  - (e) regulation 112 (effect of re-employment on tier 2 ill-health pensions),
  - (f) regulation 113 (re-employed tier 1 ill-health pensioners),
  - (g) regulation 114 (deferred pension becoming payable during HSC re-employment as a result of a transfer of undertaking), or
  - (h) Chapter 8 (abatement).
- (5) If a person who is a pension credit member is entitled to two or more pension credits—
- (a) benefits are payable to the person under [<sup>F169</sup>this Section of] the Scheme (or to any person to whom the member has opted to allocate pension under regulation 62) as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable to the one pension credit member), and
  - (b) the amounts of those benefits are determined accordingly.

### Textual Amendments

**F166** Words in [reg. 65\(1\)\(b\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

**F167** Words in [reg. 65\(2\)\(a\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **33**

**F168** Words in [reg. 65\(4\)\(b\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and](#)



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Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), 33

**F169** Words in reg. 65(5)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

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

#### **Guaranteed minimum pensions etc**

**66.**—(1) If a member has a guaranteed minimum under section 10 of the 1993 Act in relation to benefits under [F170this Section of] the Scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a member and such a member's rights under [F170this Section of] the Scheme not to be met in the case of the member,
- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member, and
- (c) the following provisions are without prejudice to the generality of this paragraph.

(2) If apart from this rule—

- (a) no pension would be payable to the member under [F170this Section of] 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) If, subject to paragraph (4)—

- (a) on reaching State pension age the member is still in employment (whether or not it is scheme employment), and
- (b) if it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

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

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

(5) If paragraph (3) or (4) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 11 of the 1993 Act.

(6) If—

- (a) before State pension age the member becomes entitled to the immediate payment of a pension, and
- (b) the member has a guaranteed minimum under section 10 of the 1993 Act in relation to the whole or part of the pension,



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

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out by reference to <sup>F171</sup>this Section of] the Scheme, and either—

- (a) all the person's rights to benefits under <sup>F171</sup>this Section of] the Scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 5(2B) of the 1993 Act (“the person's contracting-out rights”), have been transferred under Chapter 6 (transfers), or
  - (b) the person has no rights to benefits under <sup>F171</sup>this Section of] the Scheme apart from the person's contracting-out rights.
- (8) If paragraph (7) applies—
- (a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to his guaranteed minimum, if any, and
  - (b) from the date on which the person reaches pension age the person is entitled to a pension in respect of his rights under section 5(2B) of the 1993 Act,

but a person falling within paragraph (7) is not to be regarded as a pensioner for the purposes of Chapter 5 (death benefits).

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

- (a) a pension that is forfeited—
  - (i) as a result of a conviction for treason, or
  - (ii) in a case where an offence within regulation 130(2)(b) (forfeiture of rights to benefit) is committed,
- (b) a pension that is commuted under regulation 59 (option for members in serious ill-health to exchange whole pension for lump sum), or
- (c) a pension that is commuted under regulation 128 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 <sup>M31</sup> are met,

but if any other provision of <sup>F172</sup>this Section of] the Scheme is inconsistent with this rule, this rule prevails.

(10) In this regulation—

- (a) “scheme employment”, in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of <sup>F173</sup>this Section of] the Scheme, and
- (b) references to the amount of a pension are to its amount—
  - (i) disregarding any additional pension,
  - (ii) after the subtraction of any amount exchanged under regulation 58 (general option to exchange part of pension for lump sum), and
  - (iii) before the subtraction of any amount allocated under regulation 62 (election to allocate pension).

#### Textual Amendments

**F170** Words in [reg. 66\(1\)\(2\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature](#)

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Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F171** Words in reg. 66(7) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F172** Words in reg. 66(9) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F173** Words in reg. 66(10)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### Marginal Citations

**M31** S.R. 1996 No. 493

## CHAPTER 5

### DEATH BENEFITS

#### *Pensions for surviving adults*

#### Surviving adult dependants' pensions

**67.**—(1) If an active member<sup>F174</sup>, a non-contributing member], a deferred member or a pensioner member dies leaving a surviving adult dependant, the surviving adult dependant is entitled to a pension that is payable for life at the rate payable under regulations 69 to 73 and, in any case where that pension includes additional pension, regulations 40(4) and 42(3).

(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.

#### Textual Amendments

**F174** Words in reg. 67(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **34**

#### Meaning of “surviving nominated partner”

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

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

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- (ii) the person and the member were not prevented from marrying or forming a civil partnership, and
  - (iii) the person was financially dependent on the member or the person and the member were financially interdependent.
- (2) A declaration for the purposes of paragraph (1)(a) ceases to have effect if—
- (a) it is revoked by the member or other person by a signed notice in writing to the Department in such form as the Department may require or is willing to accept,
  - (b) the member makes a further declaration for the purpose of paragraph (1)(a), or
  - (c) the person or the member marries or forms a civil partnership.
- [<sup>F175</sup>(3) In the case of a 2008 Section Optant, this regulation is subject to regulation 136T.]
- [<sup>F176</sup>(4) In the case of a Waiting Period Joiner, this regulation is subject to regulation 136Z.]

#### Textual Amendments

- F175** Reg. 68(3) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **38**
- F176** Reg. 68(4) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 25**, reg. 1(2)

#### Amount of pensions under regulation 67: active [<sup>F177</sup>and non-contributing] members

**69.**—[<sup>F178</sup>(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 67 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to—

- (a) in the case of a deceased active member, the rate of the member’s pensionable pay at the time of death;
- (b) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.]

(2) Subject to paragraph (3), after the initial period, if the member dies with 2 or more years of qualifying service, the annual amount of the pension payable under regulation 67—

- (a) if the member has not reached the age of 65, is equal to 37.5% of the tier 2 ill-health pension under regulation 52 to which the member would have been entitled if on the date of death the member had become entitled to such a pension, and
- (b) if the member has reached the age of 65, is equal to 37.5% of the pension under regulation 45 (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.

[<sup>F179</sup>Sub-paragraph (b) is subject to paragraph (7).]

(3) After the initial period, if the member dies with less than 2 years of qualifying service but after reaching the age of 65, the annual amount of the pension payable under regulation 67 is equal to 37.5% of the pension to which the member would have been entitled (disregarding any additional

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pension) if on the date of death the member had become entitled to a pension under regulation 45 (normal retirement pensions) in respect of any period of pensionable service that the member is entitled to count.

[<sup>F180</sup>This is subject to paragraph (7).]

(4) After the initial period, if—

(a) the member dies with less than 2 year's qualifying service and before reaching the age of 65, and

(b) the surviving adult has a guaranteed minimum under section 13 of the 1993 Act in relation to benefits in respect of the deceased member under [<sup>F181</sup>this Section of] the Scheme,

the annual amount of the pension payable under regulation 67 is equal to that guaranteed minimum, unless paragraph (5) applies.

(5) This paragraph applies if the Department's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act.

(6) This regulation is subject to regulation 73 (re-employed pensioners).

[<sup>F182</sup>(7) For the purposes of paragraphs (2)(b) and (3) any increase under—

(a) regulation 47; or

(b) regulation 136U,

is ignored.]

### Textual Amendments

**F177** Words in [reg. 69 heading](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **35(2)**

**F178** [Reg. 69\(1\)](#) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **35(3)**

**F179** Words in [reg. 69\(2\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **39(2)**

**F180** Words in [reg. 69\(3\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **39(3)**

**F181** Words in [reg. 69\(4\)\(b\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

**F182** [Reg. 69\(7\)](#) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **39(4)**

### Amount of pensions under regulation 67: pensioner members

70.—(1) In the case of a pensioner member, for the initial period the rate of the pension payable under regulation 67 is equal to the rate of the member's pension in payment at the time of death if that amount is greater than the sum of—

- (a) the amount of the pension payable to the surviving adult dependant under this Chapter apart from this paragraph, and
- (b) the amount of the children's pensions otherwise payable under this Part.

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

[<sup>F183</sup>(3) For the purposes of paragraph (1) any reduction in the rate of the member's pension under—

- (a) Chapter 8 of this Part;
- (b) regulation 58; or
- (c) regulation 136L,

is ignored.

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

- (a) any reduction in the rate of the member's pension under—
  - (i) regulation 48,
  - (ii) regulation 58, or
  - (iii) regulation 136L; and
- (b) any increase in the rate of the member's pension under—
  - (i) regulation 47, or
  - (ii) regulation 136U,

is ignored.]

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

- (a) if the member leaves one or more dependent children who are dependant on the surviving adult dependant, the period of 6 months beginning with the day after the member's death, and
- (b) otherwise the period of 3 months beginning with that day.

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

(6) If a member who has had a tier 2 ill-health retirement pension under regulation 52 replaced by a tier 1 ill-health retirement pension (by virtue of regulation 112(2))—

- (a) is in further HSC employment and dies before the end of the initial period (within the meaning of regulation 112(6)(c) and in accordance with regulation 112(2)), or
- (b) is in further employment that is not HSC employment and dies within a period of one year beginning with the day on which that further employment ceased to be an “excluded employment” (within the meaning of regulation 112(6)(a)),

the member's pension referred to in paragraph (1) means that member's original tier 2 ill-health pension.

(7) This regulation is subject to regulation 73 (re-employed pensioners: adult survivor pensions in initial period).

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F184(8) .....

**Textual Amendments**

**F183** Reg. 70(3)(3A) substituted for reg. 70(3) (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **40(2)**

**F184** Reg. 70(8) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **40(3)**

**Amount of pensions under regulation 67: deferred members**

71.—(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 67 is equal to 37.5% of the tier 2 ill-health pension under regulation 52 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 52 (but disregarding any additional pension).

(2) In the case of any other deferred member 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 67 is equal to 37.5% of the pension under regulation 45(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**

72.—(1) If—

- (a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 13 of the 1993 Act in relation to benefits in respect of the recent leaver under [F185this Section of] the Scheme, and
- (b) the member has died before reaching the age of 65,

the surviving spouse or civil partner is entitled to a pension that is payable for life of an amount equal to that person's guaranteed minimum pension (disregarding any additional pension), unless paragraph (2) applies.

(2) This paragraph applies if the Department's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act.

(3) In this Part “recent leaver” means a person—

- (a) who left pensionable service less than 12 months before the date of death,
- (b) who is not a deferred member or a pensioner member because of rights resulting from that employment, and

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- (c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

#### Textual Amendments

**F185** Words in [reg. 72\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Re-employed pensioners: adult survivor pensions in initial period

**73.—(1)** This regulation applies if, apart from this regulation, both regulations 69(1) and 70(1) would apply on the death of a member.

(2) Where this regulation applies, the rate of pension payable by virtue of regulations 69(1) and 70(1) during the initial period (as defined in the respective regulations) shall instead be the rate provided in paragraph (3).

(3) Subject to paragraph (4), for the relevant initial period the rate of the pension payable under regulation 67 is equal to the sum of—

[<sup>F186</sup>(a) in the case of—

- (i) a deceased active member, the rate of the deceased's pensionable pay at the time of death, or
- (ii) a deceased non-contributing member, the rate of the deceased's reckonable pay on the deceased's last day of pensionable service; and

[<sup>F187</sup>(b) the rate of the deceased member's pension payable at the time of death after taking account of any reduction in the rate of pension under—

- (i) Chapter 8 of this Part,
- (ii) regulation 58, and
- (iii) regulation 136L.]]

(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.

#### Textual Amendments

**F186** [Reg. 73\(3\)\(a\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **37**

**F187** [Reg. 73\(3\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **41**

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## *Pensions for dependent children*

### **Surviving children's pensions**

**74.**—(1) If a member or a recent leaver dies leaving one or more dependent children, a pension is payable in respect of them.

(2) This is subject to paragraphs (7) to (9).

(3) If a dependent child ceases to be a dependent child after the date of death, the pension ceases to be payable in respect of that child.

(4) If a dependent child is born after the date of death, the same pension is payable in respect of the child as if the child had been born on the date of death.

(5) If a member or a recent leaver dies leaving two or more dependent children, they are entitled to such shares of the pension as the Department may from time to time decide.

(6) An amount payable under this regulation in respect of a dependent child is payable to the dependent child or, if the Department so decides, to another person for the dependent child's benefit.

(7) No pension is payable in respect of any dependant children who on the deceased's death are dependant on an adult who is entitled to a surviving adult's pension whilst that pension is payable at the rate mentioned in regulation 70(1) or 73(3)(b), except so much of that pension as is additional pension.

(8) If a dependent child is incapable of earning a living because of physical or mental infirmity for any period and the child is maintained out of money provided by Parliament in a hospital or other institution for a period exceeding one month, no pension is payable in respect of the child for any part of that period after the first month.

(9) If, apart from this paragraph, a pension would be payable in respect of any person as a dependent child of three or more persons who were deceased members or recent leavers—

(a) a pension is only payable in respect of two of them, and

(b) the amount payable is equal to the sum of the two highest pensions.

(10) For the rate at which the pension referred to in paragraph (1) is payable, see regulations 76 to 81 and, in any case where that pension includes additional pension, regulations 40(4) and 42(3).

### **Meaning of “dependent child”**

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

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

(b) either—

(i) has not reached the age of 23, or

(ii) in the opinion of the Scheme administrator was financially dependent on the deceased at the date of death because of physical or mental impairment and remains so,

(c) was born—

(i) [<sup>F188</sup>before the deceased ceased to be an active member] , or

(ii) within one year after the deceased ceased to be an active member,

(d) in the case of a person within sub-paragraph (c)(i), was dependent on the deceased—

(i) at the date of death, and



- (ii) if the deceased died after ceasing to be an active member, when the deceased ceased to be an active member, and
- (e) in the case of a person within sub-paragraph (c)(ii)—
  - (i) was dependent on the deceased both at birth and at the deceased's death, or
  - (ii) if the person was born after the deceased's death, would have been dependent on the deceased had the deceased not died before the person's birth.
- (2) A person meets the relationship condition if the person is—
  - (a) a natural child or natural grandchild of the deceased,
  - (b) an adopted child of the deceased who was adopted whilst the deceased was an active member,
  - (c) a step-child of the deceased whose natural or adoptive parent is the deceased's surviving spouse or civil partner from a marriage entered into, or a civil partnership formed, whilst the deceased was an active member,
  - (d) in a case where the deceased left a surviving nominated partner with whom the deceased was living as mentioned in regulation 68(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.

#### Textual Amendments

**F188** Words in [reg. 75\(1\)\(c\)\(i\)](#) substituted (1.4.2012) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), [regs. 1\(3\), 16](#)

#### Amount of children's pension under regulation 74: deceased active members <sup>F189</sup> and deceased non-contributing members]

**76.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 74(1) (surviving children's pensions) if at the date of death the deceased was an active <sup>F190</sup>, or a non-contributing] member of <sup>F191</sup>this Section of] the Scheme who was not also a pensioner member.

(2) Subject to paragraphs (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension” means—

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$$0.75 \times \frac{RP}{60} \times \frac{LRS}{365}$$

where—

RP is the deceased's reckonable pay, and

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

[<sup>F192</sup>(4) For this purpose “relevant service” means—

(a) in the case of an active member, the greater of—

(i) the pensionable service the deceased was entitled to count on the date of death, increased by the enhancement period (if any) that would have applied for the purposes of regulation 52(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death, and

(ii) 10 years' pensionable service;

(b) in the case of a non-contributing member, the pensionable service that the deceased was entitled to count on the date of death.]

[<sup>F193</sup>In the case of a 2008 Section Optant, this is subject to regulation 136X [<sup>F194</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 136ZC].]

(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 67—

(i) one-quarter if there is only one dependent child, and

(ii) one-half if there are two or more dependent children,

(b) if there is such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 67—

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children,

(c) if there is no such parent nor spouse nor partner of such a parent—

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children.

(6) If—

(a) a surviving adult dependant's pension is payable under regulation 67, 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 [<sup>F195</sup>equal to—

(i) in the case of a deceased active member, the rate of the deceased's pensionable pay at the date of death, and

(ii) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.]

(7) In a case within [<sup>F196</sup>paragraph (5)(b) or (c)], the rate of the pension in respect of the dependant child or children for the period of 6 months beginning with the deceased's death is [<sup>F197</sup>equal to—

(i) in the case of a deceased active member, the rate of the deceased's pensionable pay at the date of death, and

(ii) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.]

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### Textual Amendments

- F189** Words in [reg. 76 heading](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **38(2)**
- F190** Words in [reg. 76\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **38(3)**
- F191** Words in [reg. 76\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F192** [Reg. 76\(4\)](#) substituted (with effect in accordance with [reg. 1\(4\)\(c\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **38(4)**
- F193** Words in [reg. 76\(4\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **42**
- F194** Words in [reg. 76\(4\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 26**, [reg. 1\(2\)](#)
- F195** Words in [reg. 76\(6\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **38(5)**
- F196** Words in [reg. 76\(7\)](#) substituted (with effect in accordance with [reg. 1\(5\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **35** (with [reg. 89](#))
- F197** Words in [reg. 76\(7\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **38(6)**

### Amount of children's pension under regulation 74: deceased pensioner members

77.—(1) This regulation applies for determining the annual amount of the pension payable under regulation 74(1) (surviving children's pensions) if at the date of death the deceased was a pensioner member of [<sup>F198</sup>this Section of] the Scheme who was not also an active member [<sup>F199</sup>or a non-contributing member] .

(2) Subject to paragraphs (5), (6) and (7) that amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension” means the greater of—

- (a) 75% of the deceased's annual pension (disregarding any additional pension), and

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- (b) 75% of the annual pension to which the deceased would have been entitled if the deceased had been entitled to count 10 years' pensionable service (disregarding any additional pension).

[<sup>F200</sup>In the case of a 2008 Section Optant, this is subject to regulation 136X [<sup>F201</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 136ZC].]

(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 67—
- (i) one-quarter if there is only one dependent child, and
  - (ii) one-half if there are two or more dependent children,
- (b) if there is such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 67—
- (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children,
- (c) if there is no such parent or spouse or partner of a parent—
- (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children.

(5) If—

- (a) a surviving adult dependant's pension is payable under regulation 67, and
- (b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension in respect of that child for the first 3 months after the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any additional pension).

(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any reduction made under Chapter 8 (abatment) and any additional pension).

(7) If the deceased member's pension was payable under regulation 48 (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.

[<sup>F202</sup>(8) For the purposes of paragraphs (1) and (2), any reduction in the member's pension under regulation 58 and regulation 136L will be ignored.]

#### Textual Amendments

**F198** Words in [reg. 77\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F199** Words in [reg. 77\(1\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **39**

**F200** Words in [reg. 77\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature](#)

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Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **43(2)**

**F201** Words in reg. 77(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 27**, reg. 1(2)

**F202** Reg. 77(8) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **43(3)**

### Amount of children's pension under regulation 74: deceased deferred members

**78.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 74(1) (surviving children's pensions) if at the date of death the deceased was a deferred member of [<sup>F203</sup>this Section of] the Scheme who was not also an active member [<sup>F204</sup>or a non-contributing member] or a pensioner member.

(2) That amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension”—

(a) if the deceased died within 12 months after ceasing to be an active member [<sup>F205</sup>or a non-contributing member] , means the amount that would be the basic death pension for the purposes of regulation 76 if the deceased had died on the day of so ceasing (disregarding any additional pension), and

(b) otherwise, means the greater of—

(i) 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 45 on the date of death (disregarding any additional pension), and

(ii) 75% of the pension to which the deceased would have been entitled if the deceased had become so entitled and the pension had been calculated on the assumption that the member was entitled to 10 years' pensionable service (disregarding any additional pension).

[<sup>F206</sup>In the case of a 2008 Section Optant, this is subject to regulation 136X [<sup>F207</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 136ZC].]

(4) In this regulation “the appropriate fraction” means—

(a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult's pension is payable—

(i) one-quarter if there is only one dependent child, and

(ii) one-half if there are two or more dependent children,

(b) otherwise—

(i) one-third if there is only one dependent child, and

(ii) two-thirds if there are two or more dependent children.

### Textual Amendments

**F203** Words in reg. 78(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature

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Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F204** Words in reg. 78(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **40**

**F205** Words in reg. 78(3)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **40**

**F206** Words in reg. 78(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **44**

**F207** Words in reg. 78(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 28**, reg. 1(2)

#### Amount of children's pension under regulation 74: recent leavers

**79.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 74(1) (surviving children's pensions) if at the date of death the deceased was a recent leaver (within the meaning of regulation 72(3)).

(2) That amount is the appropriate fraction of the basic death pension.

(3) In this regulation—

[<sup>F208</sup>(a) “the basic death pension” means 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to—

(i) a pension under regulation 74(5) on the date of death, or

(ii) if greater, the amount that the member’s pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension), and]

(b) “the appropriate fraction” means—

(i) if there is a surviving parent of the dependant child or children or a surviving spouse or civil partner of a parent of the dependant child or children and a surviving adult's pension is payable—

(aa) one-quarter if there is only one dependant child, and

(bb) one-half if there are two or more dependant children,

(ii) otherwise—

(aa) one-third if there is only one dependant child, and

(bb) two-thirds if there are two or more dependant children.

#### Textual Amendments

**F208** Reg. 79(3)(a) substituted (with effect in accordance with reg. 1(4)(d) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **41**

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

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

- (a) a member dies leaving a dependent child or children,
- (b) there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children, and
- (c) the dependent child or children are not being maintained by that surviving parent, spouse or partner.

(2) The Department may increase the amount of the pension that would otherwise be payable under this Chapter in respect of the dependant child or children.

(3) The increased amount may not exceed the amount that would have been payable under this Chapter if there had been no such surviving parent or spouse or partner of a parent.

### **Amount of children's pension under regulation 74: re-employed pensioners**

**81.**—(1) This regulation applies for determining the annual amount of a pension payable under regulation 74(1) (surviving children's pensions) if at the date of death the deceased was an active member [<sup>F209</sup>or a non-contributing member] who was also a pensioner member of [<sup>F210</sup>this Section of] the Scheme.

(2) If there is no surviving adult dependant, the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the sum of—

[<sup>F211</sup>(a) in the case of—

- (i) a deceased active member, the rate of the deceased's pensionable pay at the date of death, or
- (ii) a deceased non-contributing member, the rate of the deceased's reckonable pay, and]
- (b) the rate of the pension being received by the deceased at the date of death (after taking account of any abatement under Chapter 8).

(3) Subject to paragraph (5), except where a pension is payable at the rate mentioned in paragraph (2), the pension in respect of the member's later service shall be paid as the appropriate fraction of 75% of the rate of pension described in—

- (a) regulation 52(5) if the deceased has not reached the age of 65 on the date of death, or
- (b) regulation 45 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 76(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 76 as a result of the member dying whilst an active member [<sup>F212</sup>or a non-contributing 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 77 as a result of the member dying whilst a pensioner member if that regulation applied to members who are also active members [<sup>F213</sup>or non-contributing members] (having regard only to the pension service and disregarding any additional pension).

(6) If, apart from this paragraph, the sum of—



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- (a) the relevant service (as defined in regulation 76(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.

#### Textual Amendments

- F209** Words in reg. 81(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **42(2)**
- F210** Words in reg. 81(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F211** Reg. 81(2)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **42(3)**
- F212** Words in reg. 81(5)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **42(4)(i)**
- F213** Words in reg. 81(5)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **42(4)(ii)**

### *Lump sum death benefits*

#### **Lump sum benefits on death: introduction**

**82.**—(1) If a member or a recent leaver or a deferred member dies before reaching the age of 75, a lump sum is payable in accordance with this Chapter.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) This regulation does not apply if—

- (a) the member is—
  - (i) a pensioner member, or
  - (ii) a pension credit member who dies after any benefits attributable to the pension credit have become payable, and
- (b) the death takes place more than five years after the member's pension becomes payable.

#### **Amount of lump sum: single capacity members and recent leavers (disregarding regulation 49 employments)**

**83.**—(1) The lump sum payable on the death of an active member [<sup>F214</sup>or a non-contributing member], who is not also a deferred member or a pensioner member, is an amount equal to twice the member's reckonable pay.



[<sup>F215</sup>In the case of a 2008 Section Optant, this is subject to regulation 136W [<sup>F216</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 136ZB].]

(2) The lump sum payable on the death of a pensioner member, who is not also an active member [<sup>F217</sup>or a non-contributing member] or a deferred member, is, in respect of each pension to which the member is entitled, the lesser of—

(a) an amount equal to five times the annual rate of the pension (other than any additional pension), less the amount of the pension payments already made to the member, and

[<sup>F218</sup>(b) an amount equal to twice the member's reckonable pay by reference to which the pension was calculated, less the aggregate of—

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

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

[<sup>F217</sup>This is subject to regulations 86A and 87.]

(3) The lump sum payable on the death of a deferred member, who [<sup>F219</sup>was not an active member or non-contributing member] or a pensioner member, is an amount equal to the member's deferred annual pension, multiplied by 2.25.

(4) The lump sum payable on the death of a recent leaver is an amount equal to the deferred annual pension to which the person would have been entitled if the person were entitled to such a pension calculated by reference to the pensionable service the recent leaver was entitled to count in the service that has ceased, multiplied by 2.25.

(5) References in this regulation to a member's deferred annual pension are to the annual pension, in respect of any period of pensionable service, to which the member would have been entitled under regulation 45 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).

[<sup>F220</sup>(6) The reference in paragraph (2)(a) to the annual rate of the member's pension is to the member's pension after it has been reduced to take account of—

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

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

(7) If a pensioner member exercised the option under regulation 62 (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) [<sup>F221</sup>was an active member or a non-contributing member] in service in an employment in respect of which the member has exercised the option under regulation 49,

(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.

#### Textual Amendments

**F214** Words in [reg. 83\(1\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and](#)

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Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **43(2)**

- F215** Words in reg. 83(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **45(2)**
- F216** Words in reg. 83(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 29**, reg. 1(2)
- F217** Words in reg. 83(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **43(3)**
- F218** Reg. 83(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **45(3)**
- F219** Words in reg. 83(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **43(4)**
- F220** Reg. 83(6) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **45(4)**
- F221** Words in reg. 83(8)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **43(5)**

#### **Amount of lump sum: dual capacity members (disregarding regulation 49 employments)**

**84.**—(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 [<sup>F222</sup>or a non-contributing member] otherwise than in service in an employment in respect of which the member had exercised the option under regulation 49 (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—

- [<sup>F223</sup>(a) five times the annual rate of pension—
  - (i) payable under regulation 52(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65,
  - (ii) payable under regulation 45 (normal retirement pensions), if the deceased had reached the age of 65,

to which the member would have been entitled—

- (aa) in the case of a deceased active member, at the member's date of death, or
- (bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service; and]

- (b) in respect of each pension to which the person has been entitled for less than 5 years, the lesser of—
- (i) five times the annual rate of the pension payable after exercising any option under regulation 58 (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 58 (general option to exchange part of pension for lump sum).

[<sup>F224</sup>This is subject to paragraph (4).]

(3) If the pensioner member exercised the option under regulation 62, 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.

[<sup>F225</sup>(4) In the case of a 2008 Section Optant—

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

#### Textual Amendments

- F222** Words in reg. 84(1)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **44(2)**
- F223** Reg. 84(2)(a) substituted (with effect in accordance with reg. 1(4)(e) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **44(3)**
- F224** Words in reg. 84(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **46(2)**
- F225** Reg. 84(4) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **46(3)**

#### Amount of lump sum: dual capacity members: members with pensions under regulation 49

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

- (a) [<sup>F226</sup>was an active member or a non-contributing member] in service in an employment in respect of which the member has exercised the option under regulation 49 (partial retirement: members aged at least 55), and

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- (b) [<sup>F227</sup>was] a pensioner member by virtue of being entitled to a pension under that regulation.
- (2) The lump sum is an amount equal to the sum of—
- (a) twice the appropriate fraction of the member's [<sup>F228</sup>reckonable pay] in that employment at the date of death, and
- (b) if the member had been entitled to any pensions under regulation 49 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)).

[<sup>F229</sup>In the case of a 2008 Section Optant, this is subject to regulation 136W.]

(3) The guarantee amount for a pension under regulation 49 is five times the annual rate of the pension at the date of death, less the amount of the pension payments already made to the member in respect of the pension.

[<sup>F230</sup>(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the reckonable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation 49 was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulation 49 as a result of the member exercising the option under regulation 58; and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 136L.]
- (5) In this regulation “the appropriate fraction” means—

**DPS**

**TDPS**

where—

DPS is, where the member continues in pensionable service as an active member [<sup>F231</sup>or a non-contributing member] on the option day (or the last such option day if the option has been exercised more than once), the total number of days which do not form part of the specified percentage of pensionable service at the option day, and

TDPS is the aggregate of DPS and the total number of days of pensionable service (at the option day or the last such option day if the option has been exercised more than once) which forms part of the specified percentage of pensionable service.

#### Textual Amendments

- F226** Words in [reg. 85\(1\)\(a\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [45\(2\)\(a\)](#)
- F227** Word in [reg. 85\(1\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [45\(2\)\(b\)](#)
- F228** Words in [reg. 85\(2\)\(a\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [45\(3\)](#)

- F229** Words in reg. 85(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **47(2)**
- F230** Reg. 85(4) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **47(3)**
- F231** Words in reg. 85(5) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **45(4)**

### Amount of lump sum: pension credit members

**86.**—(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 46 if the member had reached the age of 65 on the date of death, multiplied by 2.25.

(2) The lump sum payable on the death of a pension credit member who dies after a pension under that regulation has become payable is equal to the lower of—

- (a) the annual amount of the pension that would have been payable to the member during so much of the period of five years beginning with the date on which the pension became payable as falls after the date of death, and
- (b)

$$2RP - CLS,$$

where—

RP is the amount as at the valuation day of the reckonable pay of the debit member from whose rights the pension credit member's pension credit is derived, and

CLS is the amount of the lump sum (if any) paid to the pension credit member as a result of the member exercising the option under regulation 58 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 46.

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

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

(4) In this regulation—

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

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

### [<sup>F232</sup>Pension payable when member dies on or after reaching age 75

**86A.**—(1) If a pensioner member or a pension credit member dies—

- (a) on or after reaching age 75; and
- (b) before the fifth anniversary of the date on which the member's pension became payable,

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an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member's death until the anniversary referred to in sub-paragraph (b).

- (2) The pension payable under paragraph (1) is determined by—
- (a) calculating the amount of the lump sum that would have been payable in respect of the pensioner member or pension credit member under regulation 83(2) or, as the case may be, 86 as if on the day the member died the member had not reached the age of 75; and
  - (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the Scheme actuary for the purpose.
- (3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act (Northern Ireland) 1971, be the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation will be payable in accordance with regulation 87.]

#### Textual Amendments

**F232** Reg. 86A inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), 36 (with reg. 89)

#### Payment of lump sums [<sup>F233</sup>or pensions] on death

**87.**—(1) A lump sum payable under regulation 82 [<sup>F234</sup>or a pension payable under regulation 86A] must be paid in accordance with this regulation.

(2) The lump sum [<sup>F235</sup>or pension] must be paid to the member's personal representatives, except so far as it is payable to a different person [<sup>F236</sup>or body under paragraph (4), (6) or (10)] .

- (3) A member may give notice to the Department—
- (a) specifying—
    - (i) the member's personal representatives,
    - (ii) one or more other individuals, or
    - (iii) one incorporated or unincorporated body,
 to whom the lump sum [<sup>F237</sup>or pension] is to be paid, and
  - (b) where two or more individuals are specified, specifying the percentage of the payment payable to each of them.
- (4) If the member—
- (a) has given notice under paragraph (3) specifying a person, and
  - (b) has not revoked that notice,

the lump sum [<sup>F238</sup>or pension] (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person, unless paragraph (5) or (7) applies.

- (5) This paragraph applies if—
- (a) the person specified in the notice has died before the payment can be made, or
  - (b) payment to that person is not, in the opinion of the Department, reasonably practicable.

(6) If the member—

- (a) leaves a surviving adult dependant, and
- (b) has not given notice under paragraph (3) or has revoked any notice so given,

the lump sum [<sup>F239</sup>or pension] may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum [<sup>F240</sup>or pension] (or a specified percentage of the lump sum [<sup>F240</sup>or pension] ) would otherwise be payable has been convicted of an offence specified in regulation 130(2) (forfeiture of rights to benefit) and the Department has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(8) A notice under paragraph (3)—

- (a) must be given in writing, and
- (b) may be revoked at any time by a further notice in writing.

(9) The Department may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed—

- (a) £5,000, or
- (b) any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) (Northern Ireland) Act 1967 <sup>M32</sup> as the amount to be treated as substituted for references to £500 in section 1 of that Act.

[<sup>F241</sup>(10) The member's personal representatives may, as part of the distribution of the member's estate, give irrevocable notice to the Department—

- (a) specifying—
  - (i) one or more individuals, or
  - (ii) one incorporated or unincorporated body,to whom the benefit of the pension under regulation 86A from the date of receipt of the notice by the Department is to be assigned; and
- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

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

(11) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made;
- (b) payment to that person is not, in the opinion of the Department, reasonably practicable; or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 130 (4) (Forfeiture of rights to benefit) and the Department has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(12) The prohibition on assignment of benefits in regulation 135 (Prohibition on assignment or charging of benefits) shall not apply to an assignment by personal representatives under this regulation.]

[<sup>F242</sup>(13) In the case of a 2008 Section Optant, this regulation is subject to regulation 136T.]

[<sup>F243</sup>(14) In the case of a Waiting Period Joiner, this regulation is subject to regulation 136Z.]



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### Textual Amendments

- F233** Words in reg. 87 heading heading inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(2)** (with reg. 89)
- F234** Words in reg. 87(1) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(3)** (with reg. 89)
- F235** Words in reg. 87(2) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(4)(i)** (with reg. 89)
- F236** Words in reg. 87(2) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(4)(ii)** (with reg. 89)
- F237** Words in reg. 87(3) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(5)** (with reg. 89)
- F238** Words in reg. 87(4) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(5)** (with reg. 89)
- F239** Words in reg. 87(6) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(5)** (with reg. 89)
- F240** Words in reg. 87(7) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(6)** (with reg. 89)
- F241** Reg. 87(10)-(12) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **37(7)** (with reg. 89)
- F242** Reg. 87(13) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **48**
- F243** Reg. 87(14) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 30**, reg. 1(2)

### Marginal Citations

- M32** 1967 c. 5 (N.I.)



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

**88.**—(1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is treated for the purposes of the Finance Act 2004 as a pension protection lump sum death benefit if the member has given the Scheme administrator a statement in writing that any such lump sum is to be treated as such a benefit.

(2) In this regulation “pensioner's lump sum” means—

- (a) a lump sum payable under regulation 82 to which regulation 83(2) applies, or
- (b) so much of a lump sum payable under regulation 82 as is calculated under regulation 84(2).

(3) Paragraph (4) applies if the person who is the Scheme administrator for the purposes of section 206 of the Finance Act 2004 (“the administrator”) is liable for tax under that section in respect of a pension protection lump sum death benefit.

(4) The administrator may deduct from the lump sum the tax payable in respect of it.

### *Miscellaneous and general provisions*

#### **Death during period of absence**

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

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

and the earnings used to calculate the person's pensionable pay have ceased to be paid before the person's death.

(2) Any benefits payable under this Chapter must be calculated as if the person had died in pensionable service on the day before those earnings ceased.

#### **Polygamous marriages**

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

- (a) a member dies without leaving a surviving adult dependant, and
- (b) at the date of death the member was married to one or more persons under a law which permits polygamy.

(2) If, had the member left a surviving adult dependant, any benefit would have been payable to the surviving adult dependant as such, that benefit is payable—

- (a) if there is one such person, to that person, or
- (b) if there are two or more such persons, to those persons in equal shares.

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

#### **Dual capacity membership: death benefits**

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

- (a) a member of [<sup>F244</sup>this Section of] the Scheme of two or more of the kinds specified in paragraph (2),
- (b) a pensioner member in respect of two or more pensions, or

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- (c) a deferred member in respect of two or more pensions.
- (2) The kinds of member are—
  - (a) an active member,
  - (b) a deferred member,
  - (c) a pensioner member, and
  - (d) a pension credit member.
- (3) If paragraph (1) applies, the general rule is that—
  - (a) benefits are payable in respect of the member under this Chapter as if two or more members of the kinds in question had died (so that two or more pensions or lump sums are payable in respect of the one deceased member), and
  - (b) the amounts payable are determined accordingly.
- (4) Paragraph (3) does not apply where specific provision to the contrary is made about a person to whom that paragraph would otherwise apply.
- (5) See, in particular—
  - (a) regulation 69 (amount of pensions under regulation 67: active members),
  - (b) regulation 70 (amount of pensions under regulation 67: pensioner members),
  - (c) regulation 73 (re-employed pensioners: adult survivor pensions in initial period),
  - (d) regulation 74 (surviving children's pensions),
  - (e) regulation 81 (amount of children's pension under regulation 74: re-employed pensioners),
  - (f) regulation 82 (lump sum benefits on death: introduction),
  - (g) regulation 84 (amount of lump sum: dual capacity members (disregarding regulation 49 employments)),
  - (h) regulation 85 (amount of lump sum: dual capacity members: members with pensions under regulation 49), and
  - <sup>F245</sup>(hh) regulation 86A (Pension payable when member dies on or after age 75);
  - (i) Chapter 7 (re-employment and rejoining [<sup>F246</sup>this Section of] the Scheme).
- (6) If a person who is a pension credit member is entitled to two or more pension credits—
  - (a) benefits are payable in respect of the person under this Chapter as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of the one pension credit member), and
  - (b) the amounts of those benefits are determined accordingly.

#### Textual Amendments

**F244** Words in [reg. 91\(1\)\(a\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F245** [Reg. 91\(5\)\(hh\)](#) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **38** (with [reg. 89](#))

**F246** Words in [reg. 91\(5\)\(i\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature](#)

Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### Guaranteed minimum pensions for surviving spouses and civil partners

**92.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 13 of the 1993 Act in relation to benefits in respect of the deceased member under [<sup>F247</sup>this Section of] the Scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person,
- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person, and
- (c) paragraph (2) is without prejudice to the generality of this paragraph.

(2) If apart from this regulation—

- (a) no pension would be payable to the surviving spouse or civil partner under this Chapter, or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Paragraph (2) does not apply to a pension that is forfeited—

- (a) as a result of a conviction for treason, or
- (b) in a case where an offence within regulation 130(2)(b) (forfeiture of rights to benefit) is committed.

#### Textual Amendments

**F247** Words in [reg. 92\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\), reg. 1\(2\), Sch. 2 Pt. 1](#)

## CHAPTER 6

### TRANSFERS

#### *Transfers out*

#### Introduction: rights to transfer value payment

**93.**—(1) This Chapter supplements the rights conferred by or under Chapter IV of Part IV of the 1993 Act (transfer values).

(2) This Chapter is without prejudice to that Chapter or Chapter V of that Part <sup>M33</sup> (early leavers: cash transfer sums and contribution refunds).

(3) Accordingly—

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- (a) a member to whom Chapter IV of that Part applies (see section 89(1)(a) of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the member under [<sup>F248</sup>this Section of] the Scheme, and
  - (b) a member to whom Chapter V of that Part applies (see section 97AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.
- (4) Subject to paragraph (5) and the other provisions of this Chapter, any other member is entitled to require such a payment as if such rights had accrued to or in respect of him by reference to the pensionable service the member is entitled to count under [<sup>F249</sup>this Section of] the Scheme (and references in this Chapter to the member's accrued rights or benefits are to be read accordingly).
- (5) Paragraph (4) does not—
- (a) give any rights to an active member,
  - (b) give any rights to a pensioner member in respect of the pension to which the member has become entitled, or
  - (c) give any rights to a pension credit member in respect of rights that are directly attributable to a pension credit.

#### Textual Amendments

**F248** Words in reg. 93(3)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F249** Words in reg. 93(4) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### Marginal Citations

**M33** Chapter 5 (sections 97AA to 97AI) is inserted by Article 241 of the Pensions (Northern Ireland) Order S.I. 2005/255 (N.I. 1)

#### Applications for statements of entitlement

**94.**—(1) A member who requires a transfer value payment to be made must apply in writing to the Department for a statement of the amount of the cash equivalent of the member's accrued benefits under [<sup>F250</sup>this Section of] the Scheme at the guarantee date (“a statement of entitlement”).

- (2) In this Part, “the guarantee date” means any date that—
- (a) falls within the required period,
  - (b) is chosen by the Department,
  - (c) is specified in the statement of entitlement, and
  - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (3) In counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
- (4) In paragraph (2) “the required period” means—
- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement, or

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- (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Department, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

#### Textual Amendments

**F250** Words in [reg. 94\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Applications for transfer value payments: general

**95.**—(1) A member who has applied for and received a statement of entitlement under regulation 94 may apply in writing to the Department for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation 96(2)).

(3) In this Part such a payment is referred to as “the guaranteed cash equivalent transfer value payment”.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Department may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Department, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

#### Applications for transfer value payments: time limits

**96.**—(1) Subject to paragraph (4), an application under regulation 95(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% above the base rate.

(3) Paragraph (4) applies if—

- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to the Scheme, and

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- (b) it appears to the Department that the proceedings may lead to all or part of the member's benefits being forfeited under regulation 130 (forfeiture of rights to benefit).
- (4) The Department may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.
- (5) In any case where a direction is given under regulation 130 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 45(2)—
  - (a) in the case of an application that requires the guaranteed cash equivalent transfer value payment to be made to a registered occupational pension scheme or a registered personal pension scheme, an application under paragraph (1) may only be made if—
    - (i) the applicant became a member of that scheme not later than the end of the period of 12 months beginning with the day after the date on which 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**

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

(2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of that Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

- (4) The benefits attributable to—
  - (a) the member's accrued rights to a guaranteed minimum pension, or
  - (b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 92(2) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights).

- (5) A transfer payment may only be made to—
  - (a) a pension scheme that is registered under Chapter 2 of Part 4 of the Finance Act 2004, or
  - (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act).

## Calculating amounts of transfer value payments

**98.**—<sup>[F251]</sup>(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Department in accordance with the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996. This is subject to paragraphs (2), (3) and (5).

(2) Before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, the Department shall take advice from the Scheme actuary.]

(3) If, subject to paragraph (5), 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.

<sup>[F252]</sup>(4) In paragraph (3) “minimum transfer value” means—

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

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

(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.

<sup>[F253]</sup>(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 136L.]

### Textual Amendments

**F251** Reg. 98(1)(2) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme)



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and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **39** (with reg. 89)

**F252** Reg. 98(4) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **49(2)**

**F253** Reg. 98(6) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **49(3)**

### Effect of transfers-out

**99.** If a transfer value payment is made under this Chapter in respect of a person's rights under [<sup>F254</sup>this Section of] the Scheme, those rights are extinguished.

#### Textual Amendments

**F254** Words in reg. 99 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### Transfers in

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

**100.**—(1) Subject to the provisions of this Chapter, an active member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of him under any kind of scheme or arrangement to which paragraph (2) applies, other than a FSAVC, to be accepted by [<sup>F255</sup>this Section of] the Scheme.

(2) This paragraph applies to—

(a) a registered occupational pension scheme [<sup>F256</sup>other than a corresponding health service scheme],

(b) a registered personal pension scheme,

(c) a registered buy-out policy, and

[<sup>F257</sup>(d) a corresponding 1995 scheme, and

(e) a corresponding 2008 scheme.]

[<sup>F258</sup>(2A) A member who makes an application for a transfer value to be accepted by the Department in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.”;]

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

(4) In this regulation “FSAVC” means—

(a) a scheme which—

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- (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 <sup>M34</sup> (free-standing AVC schemes), and
  - (ii) became a registered scheme for the [<sup>F259</sup>purposes of the Finance Act 2004] by virtue of Schedule 36 to that Act, or
- (b) a scheme established on or after that date as a registered free-standing AVC scheme.
- [<sup>F260</sup>(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.]

### Textual Amendments

- F255** Words in [reg. 100\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F256** Words in [reg. 100\(2\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **40(2)** (with [reg. 89](#))
- F257** [Reg. 100\(2\)\(d\)\(e\)](#) substituted for [reg. 100\(2\)\(d\)](#) (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **40(3)** (with [reg. 89](#))
- F258** [Reg. 100\(2A\)](#) inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **40(4)** (with [reg. 89](#))
- F259** Words in [reg. 100\(4\)\(a\)\(ii\)](#) substituted (with effect in accordance with [reg. 1\(5\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **40(5)** (with [reg. 89](#))
- F260** [Reg. 100\(5\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **50**

### Marginal Citations

- M34** 1988 c. 1

## Procedure for applications under regulation 100

- 101.**—(1) An application under regulation 100—
- (a) must be made in writing,
  - (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment,
  - (c) may only be made during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of [<sup>F261</sup>this Section of] the Scheme and before the applicant reaches the age of 65,

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- (d) if the Department so requires, may only be made if the member has first requested a statement—
- (i) in the case of a transfer made under the public sector transfer arrangements, of the service that the member will be entitled to count as a result of the transfer if the payment is accepted by the Department, and
  - (ii) in a case where the transfer is not made under those arrangements [<sup>F262</sup>(including a transfer of rights from a corresponding 1995 scheme)], of the service that member will be entitled so to count if the payment is so accepted by the Department within such period as is specified in the statement, and
- (e) must meet such other conditions as the Department may require.
- (2) A statement given to the member in pursuance of [<sup>F263</sup>such a] request as is mentioned in paragraph (1)(d)—
- (a) in the case mentioned in paragraph (1)(d)(i), must inform the member of the effect (if any) of regulation 17 (restriction on reckonable pay used for calculating benefits in respect of capped transferred-in service) in the member's case, and
  - (b) in the case mentioned in paragraph (1)(d)(ii), must specify such amount as is calculated in accordance with guidance and tables provided by the Scheme actuary for the purpose.
- [<sup>F264</sup>(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of pensionable service that will count under [<sup>F265</sup>this Section of] this Scheme for the purposes of—
- (a) calculating benefits payable to or in respect of the member; and
  - (b) determining whether or not the member has reached 45 years of pensionable service for the purposes of regulations 7 and 8.]

### Textual Amendments

- F261** Words in [reg. 101\(1\)\(c\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F262** Words in [reg. 101\(1\)\(d\)\(ii\)](#) inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **41(2)** (with [reg. 89](#))
- F263** Words in [reg. 101\(2\)](#) substituted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **41(3)** (with [reg. 89](#))
- F264** [Reg. 101\(3\)](#) added (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **41(4)** (with [reg. 89](#))
- F265** Words in [reg. 101\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

## Acceptance of transfer value payments

**102.**—(1) If an application is duly made by a member under regulation 100, the Department may accept the transfer value payment if such conditions as it may require are met, unless paragraph (4) applies.

(2) If the Department accepts the payment—

- (a) the member is entitled to count the appropriate period of pensionable service for the purposes of calculating benefits payable to or in respect of the member under [<sup>F266</sup>this Section of] the Scheme, but
- (b) in the case of a member any of whose service falls to be treated as capped transferred-in service, with such period as so falls counting as such service.

(3) In paragraph (2)(a) “the appropriate period” means the period calculated in accordance with regulation 103.

[<sup>F267</sup>(3A) If the Department accepts the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service shall count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulations 7 and 8.

(3B) In paragraph (3A) “the relevant period” means the period calculated in accordance with regulation 103.]

(4) For the meaning of “capped transferred-in service”, see regulation 104.

(5) The Department may not accept a transfer value payment if—

- (a) it would be applied in whole or in part in respect of the member's or the member's spouse's entitlement to a guaranteed minimum pension, and
- (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme actuary for the purposes of this paragraph.

(6) Paragraph (5) does not apply if the transfer would be paid under the public sector transfer arrangements.

[<sup>F268</sup>(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.]

### Textual Amendments

**F266** Words in [reg. 102\(2\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F267** [Reg. 102\(3A\)\(3B\)](#) inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **42** (with [reg. 89](#))

**F268** [Reg. 102\(7\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **51**

## Calculation of transferred-in pensionable service

**103.**—(1) Subject to paragraphs (2) to (6), the period of service that the member is entitled to count under regulation 102 as the result of a transfer is to be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose.

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(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 Department 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 a result of the transfer was given to the member by the Department during the period of 3 months ending 12 months after the starting day, and
- (b) the transfer payment is received by the Department less than 3 months after the date of the statement.

(5) If the transfer value payment is accepted under the public sector transfer arrangements, the 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 [F269corresponding 2008 scheme] , the period of pensionable service the member is entitled to count is the period that the member would be entitled to count if—

- (a) the member's employment to which that scheme applied was HSC employment in respect of which the member was a member of [F270this Section of] the Scheme, and
- (b) the member's contributions to that scheme were contributions to [F270this Section of] the Scheme.

F271(7) .....

[F272(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.]

**Textual Amendments**

**F269** Words in reg. 103(6) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **43(2)** (with reg. 89)

**F270** Words in reg. 103(6) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F271** Reg. 103(7) omitted (with effect in accordance with reg. 1(3) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **43(3)** (with reg. 89)

**F272** Reg. 103(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **52**

## Meaning of “capped transferred-in service”

104.—(1) This regulation applies if—

- (a) the Department accepts a transfer value payment in respect of a member under a transfer to which the public sector transfer arrangements apply, and
- (b) the service in respect of which the transfer is made was, or included, capped service in employment to which the Scheme 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 102(2)(a) as the capped service bears to the whole of the service in respect of which the transfer is made is capped transferred-in service.

(3) For the purposes of paragraph (1)(b), the service in respect of which the transfer is made was capped service so far as—

- (a) in the case of service before 6th April 2006, the member was an active member of the transferring scheme whose pension under that scheme in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) of the Income and Corporation Taxes Act 1988 <sup>M35</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.

[<sup>F273</sup>(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 136M.]

### Textual Amendments

**F273** Reg. 104(5) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **53**

### Marginal Citations

**M35** 1988 c. 1

## Public sector transfer arrangements

105.—(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

106.—(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,



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- (b) on that transfer the transferring employees cease to be eligible to be active members of [<sup>F274</sup>this Section of] the Scheme,
  - (c) after that transfer the transferring employees become active members of another occupational pension scheme (“the new employer's scheme”),
  - (d) the Department has agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer's scheme, after consultation with the Scheme actuary, and
  - (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) In the case of the transferring members or the transferred members the transfer value payment to be paid—
- (a) is not calculated in accordance with regulation 98, but
  - (b) is to be such amount as the Department determines to be appropriate in accordance with the special terms after consulting the Scheme actuary.
- (3) This Chapter has effect with such modifications as are necessary to give effect to those terms.
- (4) If the transfer is directly or indirectly attributable to a statutory provision this Chapter has effect with such modifications as the Department considers necessary in consequence of the transfer.
- (5) Where a member to whom this regulation applies is also a member to whom Part 3 applies, a bulk transfer under this regulation also operates as a transfer of that member's rights under Part 3.

#### Textual Amendments

**F274** Words in [reg. 106\(1\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Bulk transfers in

- 107.**—(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 [<sup>F275</sup>this Section of] the Scheme,
  - (d) the Department has agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer's scheme, after consulting the Scheme actuary, and
  - (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) [<sup>F276</sup>This Section of] the Scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).
- (3) If the transfer is directly or indirectly attributable to a statutory provision [<sup>F276</sup>this Section of] the Scheme has effect with such modifications as the Department considers necessary in consequence of the transfer.



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### Textual Amendments

- F275** Words in [reg. 107\(1\)\(c\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F276** Words in [reg. 107\(2\)\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

### EU and other overseas transfers

**108.**—(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with any scheme for the provision of retirement benefits established outside the United Kingdom.

(2) The Scheme applies in relation to the member with such modifications as the Department considers necessary to comply with—

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

### *<sup>F277</sup>Transfers across*

### Textual Amendments

- F277** [Reg. 108A](#) and cross-heading inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **44** (with [reg. 89](#))

### Transfers across from the [<sup>F278</sup>1995 Section]

**108A.**—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member's rights under the [<sup>F279</sup>1995 Section], pursuant to regulation 59 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this [<sup>F280</sup>Section of the] Scheme.

(2) An application under paragraph (1)—

- (a) must be made in writing using an application form provided for the purpose by the Department;
- (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation 59 of the 1995 Regulations;
- (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under this [<sup>F281</sup>Section of the] Scheme if the application is accepted by the Department;
- (d) must meet such other conditions as the Department may require; and

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- (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must—
- (a) inform the member of the amount of pensionable service that will count under this [F282Section of the] Scheme for the purposes of calculating benefits payable to or in respect of the member;
  - (b) inform the member of the amount of pensionable service that will count under this [F282Section of the] Scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulations 7 and 8; and
  - (c) be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose.
- (4) If the Department accepts an application under paragraph (1)—
- (a) the member is entitled to count under this [F283Section of the] Scheme the periods of pensionable service mentioned in sub-paragraphs (a) and (b) of paragraph (3) for the purposes specified therein; and
  - (b) those periods of pensionable service shall be credited to the member on the day that the Department received the member's application.]

#### Textual Amendments

- F278** Words in reg. 108A heading substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F279** Words in reg. 108A(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F280** Words in reg. 108A(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F281** Words in reg. 108A(2)(c) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F282** Words in reg. 108A(3)(a)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F283** Words in reg. 108A(4)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**

## CHAPTER 7

### RE-EMPLOYMENT AND REJOINING [F284this Section of] THE SCHEME

#### Textual Amendments

**F284** Words in [reg. 109 heading](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

#### *Preliminary*

#### **Application of Chapter 7**

- 109.**—(1) Subject to paragraphs (4) to (7), this Chapter applies to persons who—
- (a) have been active members of [F285this Section of] the Scheme in respect of their service in an employment,
  - (b) have ceased to be employed in that employment and have become deferred members or pensioner members of [F285this Section of] the Scheme because of their rights in respect of that service,
  - (c) become employed again in an employment that qualifies them to belong to [F285this Section of] the Scheme, and
  - (d) become active members of [F285this Section 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 25, 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 9(5) (pensionable service: breaks in service).
- (6) Regulation 112 applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to [F286this Section of] the Scheme.
- (7) Regulation 114 (deferred pension becoming payable during HSC re-employment as a result of a transfer of undertaking) applies whether or not the deferred member becomes an active member in the HSC 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).

**Status:** Point in time view as at 01/04/2012.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

### Textual Amendments

- F285** Words in [reg. 109\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)
- F286** Words in [reg. 109\(6\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)

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

### General rule: separate treatment of service etc

- 110.**—(1) The general rule is that, in accordance with regulations 65 and 91—
- (a) the re-employed member's pensionable service in respect of the earlier service and the later service are treated separately, and
  - (b) the re-employed member's reckonable pay in respect of the earlier service and the later service is determined separately.
- (2) This regulation is subject to the provisions mentioned in regulations 65(4) and 91(5).

### Exception to general rule in regulation 110

- 111.**—(1) The general rule in regulation 110 does not apply if—
- (a) at the time that the member first becomes entitled to a pension under [<sup>F287</sup>this Section of] the Scheme in respect of the earlier service or the later service, or
  - (b) if it is earlier, at the time of the member's death,

in the opinion of the Department the benefits payable to or in respect of the member would be more valuable if that general rule were disregarded.

- (2) Accordingly, in a case within paragraph (1)—
- (a) the member's pensionable service in respect of the earlier service and the later service are treated as one single continuous period,
  - (b) the member's qualifying service in respect of the earlier service and the later service are each treated as one single continuous period,
  - (c) the member is not treated as a deferred member in respect of the earlier service, and
  - (d) the member's 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 15(8)).
- (3) This regulation is subject to regulation 114.

### Textual Amendments

- F287** Words in [reg. 111\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)

### *Special rules about re-employment of ill-health pensioners*

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

**112.**—(1) This regulation applies if a member who is entitled to a tier 2 ill-health pension under regulation 52 in respect of earlier service—

- (a) did not opt to exchange that pension for a lump sum in accordance with regulation 59, and
- (b) has re-entered employment (the “further employment”).

(2) Subject to paragraphs (3) and (4), the member ceases to be entitled to the tier 2 ill-health pension under regulation 52, and becomes entitled to a tier 1 ill-health pension under that regulation.

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

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

paragraph (2) does not apply.

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

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

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

(5) As regards a further employment in HSC employment—

- (a) paragraph (2) applies from the first tier 1 ill-health pension payment date which falls after the first anniversary of the member's re-entry into HSC employment, whether or not that day is part of a continuous period of further HSC employment beginning with entry into that employment, and
- (b) the member may not rejoin the Scheme in respect of that employment or any other HSC employment until after the first anniversary of the member's re-entry into HSC employment, whether or not that or any other HSC employment is an excluded employment.

(6) For the purposes of this regulation—

- (a) an employment is an excluded employment at any time in a tax year, in relation to a member, if the member's earnings at that time for the purposes of national insurance from the employment and any other employments are such that the lower earnings limit for that year is not exceeded,
- (b) for the purposes of paragraph (2) an employment that has been an excluded employment in a tax year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the tier 2 ill-health pension in which the limit described in sub-paragraph (a) is first exceeded, and
- (c) “the initial period” means the period of 12 months beginning with the day on which the member first enters an employment which results in this regulation applying.

(7) A member who, before attaining the age of 65, has ceased to be entitled to a tier 2 ill-health pension under paragraph (2), and who—

- (a) is in further HSC employment and ceases to be employed at all during the initial period, or
- (b) is in further employment that is not HSC employment and ceases to be employed in that further employment within a period of one year beginning with the day on which that further employment ceased to be an excluded employment,

may apply to the Department under this paragraph to become entitled to a tier 2 ill-health pension.

*Status: Point in time view as at 01/04/2012.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) An application under paragraph (7)—
- (a) where paragraph (7)(a) applies, must—
    - (i) state that the member has ceased to be employed at all,
    - (ii) be made within the initial period,
    - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 52(3)(a);
  - (b) where paragraph (7)(b) applies, must—
    - (i) state that the member has ceased to be employed at all,
    - (ii) be made within a period of one year beginning with the day on which that employment ceased to be an excluded employment,
    - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 52(3)(a).
- (9) If on an application under paragraph (7) the Department is satisfied that the member meets the condition in regulation 52(3)(a), from the day following that on which the member's last employment ceased—
- (a) the member ceases to be entitled to the tier 1 ill-health pension under regulation 52, and
  - (b) becomes entitled to a tier 2 ill-health pension under that regulation in respect of the earlier service.
- (10) A member who falls within paragraph (1) must—
- (a) notify the Department if the member is in HSC employment at the end of the initial period,
  - (b) notify the Department if the member's aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded,
  - (c) provide the Department or any other person specified by the Department with such further information as the Department specifies concerning any further employment.
- (11) This regulation is subject to regulation 113 (re-employed tier 1 ill-health pensioners).

### **Re-employed tier 1 ill-health pensioners**

**113.**—(1) This regulation applies to re-employed members who are entitled to a tier 1 ill-health pension under regulation 52 in respect of the earlier service.

(2) For the purposes of determining whether a member can count 45 years of pensionable service for any purpose, the earlier service and the later service are aggregated.

(3) If the re-employed member became entitled to a tier 1 ill-health pension for the earlier service, and on the termination of the later service the member becomes entitled to—

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

under regulation 52 in respect of the later service, the re-employed member is entitled to the benefits set out in paragraph (4).

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

- (a) the member's original tier 1 ill-health pension in respect of his earlier service, and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the later service.

[<sup>F288</sup>This is subject to paragraph (5).]

[<sup>F289</sup>(5) If the re-employed member—

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- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier service;
  - (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier service in accordance with regulation 53(3); and
  - (c) on the termination of the later service, the member becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of that later service,
- the re-employed member is entitled to the benefits set out in paragraph (6).]

#### Textual Amendments

**F288** Words in reg. 113(4) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **46(2)**

**F289** Reg. 113(5) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **46(3)**

#### *Special rule for members transferred out on transfer of undertaking*

#### **Deferred pension becoming payable during HSC re-employment as a result of a transfer of undertaking**

**114.**—(1) This regulation applies if a re-employed member becomes entitled to a pension under regulation 45 or 48 by virtue of the application of regulation 57(2)(a) (transfer of undertaking to employing authority).

(2) Regulation 111 does not apply.

(3) Accordingly, subject to paragraph (4), 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 8

#### ABATEMENT

#### **Application of Chapter 8**

**115.**—(1) This Chapter applies if—

- (a) a person who is a pensioner member of [<sup>F290</sup>this Section of] the Scheme is employed in HSC 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 52 (early retirement on ill-health: active members),
  - (ii) regulation 54 (early retirement on ill-health: deferred members), or
  - (iii) regulation 55(1)(d)(ii) (early retirement on termination of employment by employing authority) in a case where the Department certified that the member's employment



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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 “HSC employment” includes—
  - (a) employment to which regulations made under sections 10 (1) and (2) and 12 (1) and (2) of, and Schedule 3 to, the Superannuation Act 1972 apply,
  - (b) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 <sup>M36</sup>,
  - (c) employment to which regulations made under section 10 of the Superannuation Act 1972 <sup>M37</sup> and having effect in Scotland apply,
  - (d) employment [<sup>F291</sup>commencing on or before 31st March 2012] to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies,
  - (e) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006.
- (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 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 [<sup>F292</sup>this Section 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.

#### Textual Amendments

- F290** Words in reg. 115(1)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F291** Words in reg. 115(2)(d) inserted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **15**
- F292** Words in reg. 115(4) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### Marginal Citations

- M36** 1967 c. 28  
**M37** 1972 c. 11

#### Information

[<sup>F293</sup>116.—(1) A person who becomes an employed pensioner must—

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- (a) inform the person's employer in the new employment and any other person that the Department may specify that the old service pension is payable; and
  - (b) where requested, provide any information about their relevant income in the new employment to the Department or to any other person that the Department may specify.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
- (a) inform the person's employer in the other new employment, and any other person that the Department may specify, that the old service pension is payable; and
  - (b) where requested, provide any information about their relevant income in the other new employment to the Department or to any person that the Department may specify.]

#### Textual Amendments

**F293** Reg. 116 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), regs. 1(2), **45** (with reg. 89)

#### Reduction of pension

**117.**—(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 118.

(5) For the meaning of “previous pay” see regulation 119.

(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 under section 10 of the 1993 Act in relation to the old service pension, nothing in this regulation requires the reduction of the old service pension below the amount of the member's guaranteed minimum in relation to it.

#### Meaning of “relevant income”

**118.**—(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 <sup>F294</sup>this Section of] the Scheme in the new employment, that the employed pensioner is such a member), and

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- (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 48.
- (3) If the old service pension is payable under regulation 52 or 54 (ill-health pensions) to an employed pensioner who had not reached the age of 55 at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)—
  - (a) the fact that entitlement to a pension under regulation 48 depends on reaching that age is ignored, but
  - (b) the employed person's actual age at the relevant time is taken into account in determining the reduction to be made under regulation 48(2).
- (4) If the old service pension is a tier 2 ill-health pension, for the purposes of paragraph (2)(b), only the employed pensioner's actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 48.
- (5) If the employed pensioner exercised the option under regulation 58 (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.
- [<sup>F295</sup>(6) The resulting reduction in the pension is taken into account for the purposes of this regulation if the employed pensioner—
  - (a) exercised the option under regulation 62 in relation to the old service pension; or
  - (b) is a 2008 Section Optant who was entitled to a lump sum under regulation 136L in relation to the old service pension.]
- (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 (Northern Ireland) 1971 in respect of that pension, including the increases that would have been payable in respect of any amount not paid because of a reduction ignored under paragraph (5).

#### Textual Amendments

**F294** Words in [reg. 118\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F295** [Reg. 118\(6\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 31**, [reg. 1\(2\)](#)

#### Meaning of “previous pay”: general

**119.—**(1) For the purposes of this Chapter an employed pensioner's previous pay, subject to paragraph (3) and [<sup>F296</sup>regulations 120 and 121] (members with concurrent employments) 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—

*Changes to legislation:* There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

- (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 120, 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 (Northern Ireland) 1971 at 6th April in that scheme year if—
- (a) that pension was eligible to be so increased, and
  - (b) the beginning date for that pension were the same as the beginning date for the old service pension.
- (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 section 8(2) of the Pensions (Increase) Act (Northern Ireland) 1971.

#### Textual Amendments

**F296** Words in [reg. 119\(1\)](#) substituted (with effect in accordance with [reg. 1\(5\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), [46](#) (with [reg. 89](#))

#### Meaning of “previous pay”: members with concurrent employments

**120.**—(1) In the case of an employed pensioner who held one or more other HSC 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 119, and
- (b) in respect of any of the other HSC employments which are held in the scheme year mentioned in regulation 117(2), the annual rate of pay for that employment in that scheme year, and
- (c) in respect of any of the other HSC employments which are not held in the scheme year mentioned in 117(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.

**Status:** Point in time view as at 01/04/2012.

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(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 [F297 119(4)] .

#### Textual Amendments

**F297** Word in reg. 120(2) substituted (14.3.2012) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), regs. 1(2), **18**

### Application of this Chapter to part-time employment

**121.**—(1) This regulation provides for the application of this Chapter where the old employment or the new employment is a part-time employment.

[F298(2) The amount of the employed pensioner's reckonable pay for the purposes of the old service pension, as referred to in regulation 119(1)(a), shall be determined without reference to regulation 18 or 19 (reckonable pay for non-concurrent and concurrent part-time workers).]

#### Textual Amendments

**F298** [Reg. 121\(2\)](#) substituted (with effect in accordance with reg. 1(5) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), regs. 1(2), **47** (with reg. 89)

### Employed pensioners with more than one pension

**122.**—(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 115(1)(c) in any scheme year.

(2) In regulation 117—

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

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

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed pensioner's previous pay for all the old employments.

(2A) The amount of the reduction under paragraph (1) in the case of each of the pensions is equal to the same proportion of that excess as the amount of the pension for the scheme year before the reduction, bears to the sum of the pensions for that year before the reduction”.

(3) In regulation 118(1)(b) for “the old service pension” there shall be substituted “ all the old service pensions ”.

(4) Regulation 123 applies as if references to the old service pensions were references to all those pensions.

### **Provisional reductions and later adjustments**

**123.**—(1) If it appears to the Department that the condition in regulation 117(2) will be met in any scheme year in respect of the old service pension for that year, the Department may reduce the amount of that pension paid at any time in the scheme year.

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

- (a) at the end of the scheme year, and
- (b) at any time during the scheme year if it appears to the Department that—
  - (i) the amount of the reduction made for the year is or may become incorrect, or
  - (ii) no reduction should be made.

(3) If at any time during the scheme year it so appears the Department must make such adjustments, whether by altering the amount of the reduction or by repaying to the employed pensioner any amount that should not have been deducted from the pension, as appear to the Department to be required.

(4) If at the end of the scheme year it is apparent that—

- (a) the reduction in the old service pension for the year was excessive, or
- (b) no such reduction should have been made,

the Department must repay the amount due to the employed pensioner.

(5) If at the end of the scheme year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 117 was not made, the employed pensioner must repay the excess to the Department.

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

## **CHAPTER 9**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

#### *Scheme administrator*

#### **Appointment of scheme administrator**

**124.**—(1) For the purposes of this Part and of Part 4 of the Finance Act 2004, the Scheme administrator is the Department.

#### *Claims*

#### **Claims for benefits**

<sup>[F299]</sup>**125.**—(1) A person claiming to be entitled to benefits under this Part (“the claimant”) shall make a claim in writing to the Department.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) shall provide such—

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

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as the Department may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Department so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Department from time to time.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000.]

#### **Textual Amendments**

**F299** Reg. 125 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\), regs. 1\(2\), 48 \(with reg. 89\)](#)

#### *Power to extend time limits*

#### **Power to extend time limits**

**126.** The Department may extend any time limit mentioned in this Part as it applies in any particular case.

#### *Beneficiaries who are incapable of looking after their affairs*

#### **Beneficiaries who are incapable of looking after their affairs**

**127.—**(1) In the case of a beneficiary who, in the opinion of the Department, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Department may—

- (a) use any amount due to the beneficiary under the Scheme for the beneficiary's benefit, or
- (b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Department from any obligation under the Scheme in respect of the amount.

#### *Commutation of small pensions*

#### **Commutation of small pensions**

**128.—**(1) The Department may pay any person entitled to a pension under [<sup>F300</sup>this Section of] the Scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under [<sup>F300</sup>this Section of] the Scheme on the person's death apart from the payment if the conditions specified in paragraph (2) are met.

(2) The conditions are that the payment complies with the following requirements (in so far as they apply)—

- (a) the contracting-out requirements,
- (b) the preservation requirements,



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(c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997<sup>M38</sup>,

<sup>F301</sup>(d) .....

(e) the lump sum rule (see, in particular, paragraph 7 of Schedule 29 to the Finance Act 2004: trivial commutation lump sums for the purposes of Part 4 of that Act),<sup>F302</sup> ...

(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)<sup>F303</sup>; and

(g) Regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payment by larger pension schemes).]

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

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

**Textual Amendments**

**F300** Words in [reg. 128\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F301** [Reg. 128\(2\)\(d\)](#) omitted (with effect in accordance with [reg. 1\(3\)\(f\)](#) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **47**

**F302** Word in [reg. 128\(2\)](#) omitted (14.3.2012) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), [regs. 1\(2\)](#), **19(2)**

**F303** [Reg. 128\(2\)\(g\)](#) and word added (14.3.2012) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), [regs. 1\(2\)](#), **19(3)**

**Marginal Citations**

**M38** [S.R.1997 No. 153](#)

*Reduction in and forfeiture of benefits*

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

**129.**—(1) If, as a result of a member's criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member's employment relationship with the member's employer, the Department—

(a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss, or

(b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.

(2) Paragraph (1) does not apply so far as the pension or other benefit—

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- (a) is a guaranteed minimum pension or safeguarded rights which are derived from rights to such a pension, or
  - (b) arise out of a transfer payment.
- (3) If the Department proposes to exercise the power under paragraph (1), the Department must give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.
- (4) If the amount of the loss is disputed, no reduction may be made under paragraph (1) until the member's obligation to make good the loss has become enforceable—
- (a) under the order of a competent court, or
  - (b) in consequence of an award of an arbitrator.
- (5) If the loss is suffered by an employing authority, the amount of any reduction under paragraph (1) must be paid to that authority.

### **Forfeiture of rights to benefits**

**130.**—(1) The Department 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 [<sup>F304</sup>this Section of] the Scheme, in respect of which the Secretary of State has issued a forfeiture certificate,
- (b) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to—
  - (i) a term of imprisonment of at least 10 years, or
  - (ii) two or more consecutive terms amounting in aggregate to at least 10 years.

(3) In paragraph (2)(a) “forfeiture certificate” means a certificate that the Secretary of State is satisfied that the offence—

- (a) has been gravely injurious to the State, or
- (b) is liable to lead to serious loss of confidence in the public service.

(4) The Department may direct that all or part of any rights to benefits or other amounts payable in respect of a member under these Regulations be forfeited where the benefits or amounts are payable to a person to whom paragraph (5) applies who has been convicted of the murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element.

(5) This paragraph applies to a person who is—

- (a) the member's widow, widower, 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 87(3) [<sup>F305</sup>or (10)] , or
- (d) a person to whom such benefits or amounts are payable under the member's will or on the member's intestacy.

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

(7) This regulation is without prejudice to section 2 of the Forfeiture Act 1870<sup>M39</sup> (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 9(2) of the Criminal Justice Act (Northern Ireland) 1953<sup>M40</sup>).

#### Textual Amendments

**F304** Words in reg. 130(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F305** Words in reg. 130(5)(c) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **49** (with reg. 89)

#### Marginal Citations

**M39** 1870 c. 32

**M40** 1953 c. 14 (N.I. )

### *Provisions about tax*

#### **Deduction of tax**

**131.**—(1) The Department may deduct from any payment under [<sup>F306</sup>this Section of] the scheme any tax which is required to be paid in respect of it.

(2) Without prejudice to the generality of paragraph (1), if a person becoming entitled to a benefit under this Part—

- (a) is a benefit crystallisation event under section 216 of the Finance Act 2004, and
- (b) a lifetime allowance charge under section 214 of that Act arises when that event occurs,

the tax charged must be paid by the Scheme administrator.

(3) Paragraph (4) applies if—

- (a) a member has given the scheme administrator a statement in accordance with regulation 87 (tax treatment under the Finance Act 2004 of lump sums payable on pensioners' death) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the Finance Act 2004, and
- (b) has not withdrawn that statement.

(4) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the scheme administrator may deduct the tax payable under section 206 of that Act (special lump sum death benefits charge) from the lump sum.

#### Textual Amendments

**F306** Words in reg. 131(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

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### *Interest on delayed payments*

#### **Interest on late payment of benefits and refunds of contributions**

**132.**—(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 [<sup>F307</sup>this Section of] the Scheme (other than any amount due under regulation 31 or 32) or interim [<sup>F308</sup>or substitute] award.

[<sup>F309</sup>(3) The Department must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Department is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.]

(4) The interest on the unpaid amount is calculated at the base rate on a day to day basis from the due date for the amount to the date of its payment and compounded with three-monthly rests.

(5) For the purposes of this regulation, except where paragraph (6) applies, “due date”, in relation to an unpaid amount [<sup>F310</sup>(other than an unpaid amount in respect of an interim or substitute award)] , means—

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 4 (members' retirement benefits) [<sup>F311</sup>or a lump sum under regulation 136L] , 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 [<sup>F312</sup>, other than a pension payable under regulation 86A (Pension payable when member dies on or after reaching age 75)] , the day after the date of death,
- (c) in the case of an amount in respect of a lump sum under Chapter 5 (death benefits) that is payable to the member's personal representatives, the earlier of—
  - (i) the date on which probate or letters of administration were produced to the Department, and
  - (ii) the date on which the Department was satisfied that the lump sum may be paid as provided in regulation 87(9), and
- (d) in the case of an amount in respect of any other lump sum under that Chapter, the day after the date of the member's death, and
- (e) in the case of an amount in respect of a refund of contributions, the day after that on which the Department received from Her Majesty's Commissioners of Revenue and Customs the information required for the purposes of calculating the amount to be subtracted under regulation 44(3) or (4)[<sup>F313</sup>; and
- (f) in the case of an amount in respect of a pension under regulation 86A that is payable to—
  - (i) the member's personal representatives, the date on which probate or letters of administration were produced to the Department,
  - (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation 87(10) was received by the Department, and
  - (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member's death.]

[<sup>F314</sup>(6) The due date for an unpaid amount—

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(a) referred to in paragraph (5) in respect of which the Department was not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;

(b) in respect of an interim or substitute award,

shall be the first day on which the Department was in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.]

(7) In this regulation, “[<sup>F315</sup>interim or substitute award]” means—

- (a) any amount paid by way of an interim payment calculated by reference to an expected benefit under [<sup>F316</sup>this Section of] the Scheme pending final calculation of the full value of that benefit, <sup>F317</sup> ...
- (b) any amount paid that increases the amount of an earlier payment due to a backdated or subsequent increase in pensionable pay<sup>F318</sup>; and
- (c) any amount paid that increases the amount of an earlier payment due to the payment of a tier 2 ill-health pension under regulation 52 paid to a member in substitution for a tier 1 ill-health pension under that regulation following a determination by the Department under regulation 53.]

#### Textual Amendments

- F307** Words in reg. 132(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**
- F308** Words in reg. 132(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **48(2)**
- F309** Reg. 132(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **48(3)**
- F310** Words in reg. 132(5) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **48(4)**
- F311** Words in reg. 132(5)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **54**
- F312** Words in reg. 132(5)(b) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), regs. 1(2), **50(2)** (with reg. 89)
- F313** Reg. 132(5)(e) and word added (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), regs. 1(2), **50(3)** (with reg. 89)
- F314** Reg. 132(6) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care](#)

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(Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **48(5)**

**F315** Words in reg. 132(7) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **48(6)**

**F316** Words in reg. 132(7)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F317** Word in Reg. 132(7)(a) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **48(6)(b)**

**F318** Reg. 132(7)(c) and word added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **48(6)(c)**

### *Determination of questions*

#### **Determination of questions**

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

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

### *General prohibition on unauthorised payments*

#### **General prohibition on unauthorised payments**

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

### *Prohibition on assignment or charging of benefits*

#### **Prohibition on assignment or charging of benefits**

**135.**—(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under [F319this Section of] the Scheme is void.

(2) On the bankruptcy of any person entitled to a benefit under [F319this Section of] the scheme, no part of the benefit may be paid to the person's trustee in bankruptcy or other person acting on behalf of the creditors, except in accordance with an order under Article 283 of the Insolvency (Northern Ireland) Order 1989<sup>M41</sup> (income payments orders).

### Textual Amendments

**F319** Words in [reg. 135\(1\)\(2\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

### Marginal Citations

**M41** 1989/2405 (N.I. 19)

## *Record keeping and contribution estimates*

### <sup>F320</sup>Employing authority and certain member record keeping and contribution estimates

**136.**—(1) As regards a member who is a non-GP provider who derives practitioner income from the contracts, agreements or payments referred to in regulation 13(6), in respect of each scheme year, the member shall provide each relevant host Board with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards a GMS practice or an APMS contractor, in respect of each scheme year, the practice or contractor shall provide the Department with a statement of estimated pensionable earnings in respect of any non-GP provider that is an APMS contractor or who assists in the provision of HSC services provided by that GMS practice or an APMS contractor, at least 1 month before the beginning of that Scheme year.

(3) If, in respect of a scheme year, a non-GP provider has failed to comply with the requirements of paragraph (1), the non-GP provider’s pensionable earnings for that scheme year shall be zero.

This is subject to paragraph (4).

(4) If, in respect of a scheme year—

- (a) a non-GP provider has failed to comply with the requirements of paragraph (1);
- (b) a benefit is payable for, or in respect of their non-GP provider service; and
- (c) the non-GP provider’s employing authority is in possession of a figure representing all or part of the non-GP provider’s pensionable earnings for that year,

the Department may treat that figure as the amount of the non-GP provider’s pensionable earnings for that year.

(5) If, in respect of a scheme year, a non-GP provider—

- (a) dies without complying with the requirements of paragraph (1); or
- (b) is, in the opinion of the Department, unable to look after the non-GP provider’s own affairs by reason of illness or lack of capacity,

the Department may require that non-GP provider’s personal representatives to provide the relevant certificate—

- (i) within the period referred to in paragraph (1), or



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- (ii) within such other period as the Department should permit.
- (6) All employing authorities under this Part of the regulations shall, for each scheme year—
- (a) provide the Department with a statement of estimated total contributions due to [<sup>F321</sup>this Section of] the Scheme under regulation 27 (Contributions by members) and 31 (Contributions by employing authorities: general); and
  - (b) maintain records of contributions to [<sup>F321</sup>this Section of] the Scheme made under regulations 27 and 31.
- (7) The statement referred to in paragraph (6)(a) shall be provided to the Department and no later than 2 months after the end of each scheme year.
- (8) Except where the Department waives such requirement, an employing authority shall provide the Department with a statement of contributions to [<sup>F322</sup>this Section of] the Scheme recorded in accordance with paragraph (6)(b) no later than 2 months after the end of each scheme year.
- (9) The certificates and statements referred to in this regulation—
- (a) shall be in such form as the Department shall from time to time require;
  - (b) may be provided to the Department in such manner as it may from time to time permit.
- (10) A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment or of a disturbance in the functioning of his mind or brain.]

#### Textual Amendments

- F320** Reg. 136 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **49**
- F321** Words in reg. 136(6) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**
- F322** Words in reg. 136(8) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

## [<sup>F323</sup>CHAPTER 10

### 2008 Section Optants

#### Textual Amendments

- F323** Pt. 2 c. 10 added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **55**

### Application of Chapter 10 of this Part

#### 136A

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

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

[ both—

- <sup>F324</sup>(c) (i) became entitled to a pension under regulation 14 or 14A of the 1995 Regulations (which deal with an early retirement pension on the grounds of redundancy and an early retirement pension on termination of employment by employing authority, respectively) on leaving employment with one employing authority, and
- (ii) elected to continue to be an active member of the 1995 Section in respect of any other continuing pensionable employment in accordance with paragraph (6) of regulation 77 of those Regulations (Members doing more than one job).]

This Chapter does not apply to persons if—

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

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

#### Textual Amendments

**F324** Reg. 136A(1)(c) inserted (with effect in accordance with reg. 1(4)(a) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 32**, reg. 1(2)

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

#### 136B

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

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

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

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

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

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

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

(4) For the purpose of paragraph (3)—

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

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

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

This is subject to paragraph (12).

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

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

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

(9) The Department may accept an option to join the 2008 Section that is received after the person ceases to be an active member of the 1995 Section if [<sup>F325</sup>either paragraph (9A) applies to that person or that person satisfies all of the following] —

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

- [  
F326(9A) This paragraph applies to a person who—
- (a) has ceased to pay contributions in accordance with paragraph (3) or paragraph (4) of regulation 10 of the 1995 Regulations (Contributions by members),
  - (b) is continuing in HSC employment, and
  - (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.]
- (10) A person may revoke a notice given for the purposes of paragraph (9)(c)—
- (a) at any time;
  - (b) in writing on the form provided by the Department for that purpose.
- (11) A person who has revoked a notice in accordance with paragraph (10) may not provide a further notice under paragraph (9).
- (12) A person exercising an option under this regulation who is entitled to a pension under regulation 13A of the 1995 Regulations (Ill health pension on early retirement) may count as qualifying service for the purpose of this Section of the Scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count under regulation 5 of the 1995 Regulations (Meaning of qualifying service) in determining their entitlement to that pension.
- (13) For the purposes of paragraphs [F327(4), (9) and (9A)] the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent (whether by electronic communication or otherwise)—
- (a) to the person; or
  - (b) to the person’s employing authority.
- (14) Where paragraph 13(b) applies the person must have a period equal to at least three months ending on the date specified by the Department in accordance with paragraph (4)(a) in which to opt to join this Section of the Scheme.
- This is subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8).

#### Textual Amendments

- F325** Words in [reg. 136B\(9\)](#) inserted (with effect in accordance with [reg. 1\(4\)\(b\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\), Pt. 3 reg. 33\(2\)](#), [reg. 1\(2\)](#)
- F326** [Reg. 136B\(9A\)](#) inserted (with effect in accordance with [reg. 1\(4\)\(b\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\), Pt. 3 reg. 33\(3\)](#), [reg. 1\(2\)](#)
- F327** Words in [reg. 136B\(13\)](#) substituted (with effect in accordance with [reg. 1\(4\)\(b\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\), Pt. 3 reg. 33\(4\)](#), [reg. 1\(2\)](#)

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### *Transfer of service from the 1995 Section*

#### **Service credited from the 1995 Section**

##### **136C**

- (1) A 2008 Section Optant who—
- (a) becomes a member of this Section of the Scheme; and
  - (b) is not entitled to a pension under regulation 13A of the 1995 Regulations (ill-health pension on early retirement),

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

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

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

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

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

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

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

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

- (a) shall not include any superannuable service the Optant was entitled to count under regulation 4(1)(e) of those Regulations;
- (b) shall be calculated without regard to paragraph (5) of regulation 76 of those Regulations (Mental Health Officers); and
- (c) where the Optant is entitled to count any part-time superannuable service in the 1995 Section, shall be calculated in accordance with regulation 78 of those Regulations (Part-time employment).

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

#### **Treatment of Additional Pension**

##### **136D**

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

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

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation 73G of the 1995 Regulations (Effect of payment of additional contributions under this Part);
  - (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation 73F of those Regulations (Cancellation and cessation of options under regulation 73A).
- (3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 40 shall be equal to the amount of additional pension—
- (a) purchased in the 1995 Section under regulation 73G of the 1995 Regulations where the person's chosen birthday under the OPAP was 65;
  - (b) that would have been purchased in the 1995 Section under regulation 73G of the 1995 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Department shall have regard to the advice of the Scheme actuary, where the person's chosen birthday under the OPAP was 60.
- Paragraph (3)(b) is subject to paragraph (9).
- (4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 42 shall be equal to the amount of additional pension—
- (a) that was purchased in the 1995 Section under regulation 73H of the 1995 Regulations, where the person's chosen birthday under the OPAP was 65;
  - (b) that would have been purchased in the 1995 Section under regulation 73H of the 1995 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Department shall have regard to the advice of the Scheme actuary, where the person's chosen birthday under the OPAP was 60.
- Paragraph (4)(b) is subject to paragraph (9).
- (5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the Scheme shall do so from the effective date specified in paragraph (5) of regulation 136B.
- (6) This paragraph applies—
- (a) to a person referred to in paragraph (1); and
  - (b) where at the effective date specified in paragraph (5) of regulation 136B—
    - (i) that person—
      - (aa) was making additional contributions in accordance with an OPAP exercised under regulation 73A of the 1995 Regulations; or
      - (bb) had applied to make, but had not yet begun making, additional contributions under regulation 73A of the 1995 Regulations; or
      - (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation 73C of the 1995 Regulations, or
    - (ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation 73D of the 1995 Regulations.
- (7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation 73A of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section of the Scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 34, 36 or 37 would apply in that case.

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

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

This is subject to paragraph (9).

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

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

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

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

## Treatment of Additional Service

### 136E

(1) A 2008 Section Optant—

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

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

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

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

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



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

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

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

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

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

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

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

- (a) first taking a period equal in length to the period of additional service (specified in days) calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies (“Period AS”); and
- (b) then multiplying Period AS by the factor specified by the Department for that purpose.

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

- (a) election to buy additional service will cease from that date; and
- (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member's pensionable pay in accordance with regulation 136B(6) and (7).

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

- (a) regulation 136C(3), if the member is under age 60 on 1st October 2009; or
- (b) regulation 136C(4), if the member is age 60 or over on that date.

This is subject to regulation 136R.

## **Treatment of unreduced retirement lump sum**

### **136F**

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person's option to join this Section of the Scheme was received by

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the Department in accordance with regulation 136B, had made an election under regulation 68 of the 1995 Regulations (Right to buy an unreduced lump sum) to—

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

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

(2) Those conditions are that the election—

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

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

- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 136B(6) and (7);
- (b) any liability to pay additional contributions under the election will cease from, and including, 1st April 2008; and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

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

#### **136G**

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

- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 4 and 5 of this Part; and
- (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation 52(3) of the 1995 Regulations (Early leavers returning to superannuable employment).

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

- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 136C that relates to one or more periods of superannuable employment in the 1995 Section that occurred before a break of 12 months or more in such employment (“an earlier service credit”); and
- (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 136C that relates to a period of superannuable employment in the 1995 Section that occurred after a break of 12 months or more in such employment.

This is subject to paragraph (3).

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

- (a) separately; and

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

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

### **Pension debit members**

#### **136H**

(1) This regulation applies where, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member.

(2) The amount of the reduction to be made to the Optant's pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant's pension under the 1995 Section calculated in accordance with Article 28 of the 1999 Order (Reduction of benefit) adjusted by the factor referred to in paragraph (3).

(3) The factor referred to in paragraph (2) is the factor specified by the Department for that purpose.

(4) The Department may, after taking advice from the Scheme actuary, make such modifications to—

- (a) the Optant's rights; and
- (b) as to the form of the Optant's benefits,

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

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

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

#### **136I**

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

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

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

- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 136C that relates to one or more periods of superannuable service in the 1995 Section before that Optant's earnings were reduced as described in paragraph (1) ("a protected service credit"); and

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- (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 136C that relates to a period of superannuable service in the 1995 Section after that Optant's earnings were reduced as described in paragraph (1).

This is subject to paragraph (3).

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

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

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

#### **136J**

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

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

(3) In this regulation "permitted maximum" means—

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

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

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

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

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

### **Meaning of "capped Optant service"**

#### **136K**

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

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

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

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

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

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

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

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

#### **136L**

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

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

- (5) The amount of the lump sum shall be determined by—
  - (a) applying the formula—

$$3 \times (\text{RelevantService} \times \text{ReckonablePay}) \div (80 \times 365)$$

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (6) In the case of an Optant who—
    - (a) becomes entitled to an annual amount of pension payable under regulation 48; and
    - (b) has not attained age 60 on the day of becoming entitled to that pension,

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

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

(a) applying the formula—

$$3 \times (\text{RelevantService} \times \text{ReckonablePay} \times \text{ReductionFactor}) (80 \times 365)$$

and

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

(8) In the case of an Optant who—

(a) becomes entitled to an annual amount of pension payable under regulation 49 for the first time; and

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

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

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

(a) applying the formula—

$$3 \times (\text{SpecifiedService} \times \text{ReckonablePay} \times \text{ReductionFactor}) (80 \times 365)$$

and

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

(10) In the case of an Optant who—

(a) becomes entitled to an annual amount of pension payable under regulation 49 for the first time, and

(b) has attained age 60 on the day of becoming entitled to that pension,

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

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

(a) applying the formula—

$$3 \times (\text{SpecifiedService} \times \text{Reckonablepay}) (80 \times 365)$$

and

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

(12) In the case of an Optant—

(a) who is a pensioner member as respects a pension payable under regulation 49 as described in paragraph (9)(a) of that regulation; and

(b) who—

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

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

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

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

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

(a) applying the formula—

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

and

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

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

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

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

(16) For the purposes of this regulation—

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

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

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

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

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

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

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

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

(a) the period of pensionable service that the Optant is entitled to count under regulation 136C; and

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

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

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



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

*Miscellaneous provisions*

**Transfers in: transitional provision**

**136M**

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

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

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

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

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

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

This is subject to paragraph (5).

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

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

## **2008 Section Optants: Transitional Tier 2 ill-health pension**

### **136N**

- (1) This regulation applies to a 2008 Section Optant who—
- (a) has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and
  - (b) that form and supporting medical evidence was received by the Department before the date on which the Department received the Optant’s option to join this Section of the Scheme.
- (2) If the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 52(3) (“a tier 2 ill-health pension”) within a period of one year beginning with the day on which that Optant’s option to join this Section of the Scheme is received—
- (a) that Optant’s service shall be increased by the enhancement period determined in accordance with paragraph (3) (“the transitional enhancement period”); and
  - (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant’s service under regulation 52(6).

This is subject to paragraph (5).

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

This is subject to paragraph (4).

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

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

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

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

### **136O**

- (1) This regulation applies to a 2008 Section Optant—
- (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 52; and
  - (b) that form and supporting medical evidence is received by the Department before the end of the period of one year commencing on the day on which the Department received the Optant’s option to join this Section of the Scheme.

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

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

This is subject to paragraph (3).

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

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

#### **136P**

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

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

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

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

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

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 52(3)

(a) at the date of the Department’s review, “permanently” shall mean until age 60.

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

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

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

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

This is subject to paragraph (6).

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

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

**136Q**

- (1) This regulation applies to a 2008 Section Optant—
  - (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 52;
  - (b) that form and supporting medical evidence was received by the Department before the end of the period of one year commencing on the day the Department received the Optant's option to join this Section of the Scheme; and
  - (c) following a consideration of the form and medical evidence referred to in sub-paragraph (a)—
    - (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 52, and
    - (ii) at the time the Optant is awarded a pension under that regulation the Department gives the Optant notice in writing in accordance with regulation 53(1)(b) that the Optant's case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 52(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 53, the Department determines that the Optant meets the condition in 52(3)(a), then as from the date on which that determination is made the Optant—
  - (a) ceases to be entitled to a tier 1 ill-health pension; and
  - (b) becomes entitled to a tier 2 ill-health pension under regulation 52 but which shall be calculated in accordance with paragraph (3).
- (3) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (2)—
  - (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 136N applies to that Optant; and
  - (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 52(6).

This is subject to paragraph (4).

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

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

**136R**

(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 136E.

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation 13A of the 1995 Regulations (Ill-health pension on early retirement);
- (b) that form and supporting medical evidence was received by the Department before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 67 of the 1995 Regulations (Paying for additional service and unreduced retirement lump sum by regular additional contributions); and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 52 within a period of one year beginning with the day on which the Optant’s option to join this Section of the Scheme is received,

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

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect of that period of additional service shall be returned to the Optant in accordance with regulation 73(2) of the 1995 Regulations (Part payment for additional service or unreduced retirement lump sum, and
- (ii) paragraph (7) of regulation 136E will not apply.

(3) If—

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

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

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

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

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

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

#### **136S**

(1) This regulation applies to a person who—

- (a) on, or after, 1st October 2009—
  - (i) is an active member of the 1995 Section, or
  - (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation 65 of the 1995 Regulations (Absence because of illness or injury or certain types of leave);
- (b) has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and
- (c) that form and supporting medical evidence was received by the Department—
  - (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 136B, or
  - (ii) if such a statement has been issued to that person, before the date specified by the Department for the purposes of paragraph (3) of that regulation.

(2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).

(3) The option under paragraph (2) may only be exercised if—

- (a) the person gives notice in writing to the Department in such form as it requires; and
- (b) that notice is received by the Department within a period of four months starting with, where—
  - (i) that person is sent a written notification of the Department's decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation 13A of the 1995 Regulations ("the first decision"), the date of that decision,
  - (ii) that person is sent a written notification of the Department's decision in respect of the stage one dispute, ("a stage one decision"), the date of that decision,
  - (iii) that person is sent a written notification of the Department's decision in respect of the stage two dispute, ("a stage two decision"), the date of that decision, or

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- (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

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

- (5) For the purpose of this regulation—

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

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

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

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

#### **136T**

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

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- (a) in the case of the nomination referred to in sub-paragraph (2)(a), as if that nomination has been accepted by the Department as a notice for the purposes of regulation 87;
- (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Department as a notice for the purposes of regulation 87 specifying that the Optant's personal representatives are to receive any lump or pension on the death of the Optant; and
- (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Department as a declaration for the purposes of regulation 68.

### **Late payment of pension with actuarial increase for a 2008 Optant**

#### **136U**

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

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

- (a) the pensionable service that Optant is entitled to count under—
  - (i) regulation 136C,
  - (ii) regulation 136E (if any), and
  - (iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65; and
- (b) any contributions paid under regulation 34, 36 or 37 before reaching that age,

shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

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

- (a) before that pension had been reduced in accordance with regulation 136L; and
- (b) before any commutation under regulation 58.

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

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

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

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

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

#### **136V**

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

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



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

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

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

(a) a tier 1 ill-health pension; or

(b) a tier 2 ill-health pension,

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

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

(a) the member’s tier 1 ill-health pension under regulation 13A of the 1995 Regulations in respect of the member’s earlier 1995 Section service; and

(b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member’s later 2008 Section service.

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

(5) If the Optant—

(a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service;

(b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation 13B of the 1995 Regulations (Re-assessment of ill-health condition determined under regulation 13A); and

(c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of later 2008 Section service on the termination of that later service,

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

(6) Those benefits are—

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

(b) a tier 1 ill-health pension in respect of the later 2008 Section service.

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

#### **136W**

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

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

(b) is an active or a non-contributing member in respect of service in this Section of the Scheme (“the later 2008 Section service”).

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

(a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant; and

(b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant’s later 2008 Section service under regulation 83.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 52(5), if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 45, if the deceased Optant had reached the age of 65,

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

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

- (a) payable under regulation 52(5), if the deceased Optant had not reached the age of 65; or
- (b) payable under regulation 45, if the deceased Optant had reached the age of 65,

to which the Optant would have been entitled on the last day of the Optant's pensionable service.

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

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

**136X**

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

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

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

(3) "Relevant service" means—

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

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

## [<sup>F328</sup> CHAPTER 11

### Textual Amendments

**F328** Pt. 2 Ch. 11 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), [reg. 34](#), reg. 1(2)

### Waiting Period Joiners

### **Application of Chapter 11 of this Part**

**136Y.**—(1) This Chapter makes provision in relation to pensioner members of the 1995 Section who are eligible to be members of this Section of the Scheme in accordance with paragraph (1)(b)(ii) of regulation 21A (Eligibility: transitional).

(2) A member of this Section of the Scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

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

**136Z.**—(1) This regulation applies if—

- (a) on the day a Waiting Period Joiner becomes an active member of this Section of the Scheme—
  - (i) the Department has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of that Joiner, and
  - (ii) that Joiner has not revoked that nomination or notice; or
- (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the Scheme, that Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table at paragraph (4).

(2) The nominations and notices referred to in paragraph (1)(a) are—

- (a) a nomination made in accordance with regulation 22 of the 1995 Regulations (Payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations 18 to 21 of those Regulations (which deal with lump sum payments on the death of a member in different circumstances);
- (b) a notice provided for the purposes of paragraph (3)(a) of regulation 22 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations 18 to 21 of those Regulations;
- (c) a notice provided for the purpose of regulation 31E of the 1995 Regulations (Surviving nominated partner’s pension) nominating a partner to receive a surviving nominated partner pension.

(3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1)(a) shall be treated—

- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Department as a notice for the purposes of regulation 87,
- (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Department as a notice for the purposes of regulation 87 specifying that the Waiting Period Joiner’s personal representatives are to receive any lump sum or pension on the death of that Joiner, and
- (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Department as a declaration for the purposes of regulation 68.

(4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table shall, without more, be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

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<i>Column 1</i>	<i>Column 2</i>
<b>1995 Regulations</b>	<b>2008 Regulations</b>
22	87
31E	68

### **Waiting Period Joiners who are in receipt of a tier 1 ill-health pension under Regulation 13A of the 1995 Regulations**

**136ZA.**—(1) This regulation applies to a Waiting Period Joiner who—

- (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
- (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 52 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

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

(3) A Waiting Period Joiner is entitled to the benefits set out in paragraph (4) if, on the termination of the later 2008 Section service, that Joiner becomes entitled to a tier 1 or a tier 2 ill-health pension under regulation 52 in respect of that later service.

(4) Those benefits are—

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

This is subject to paragraph (5).

(5) A Waiting Period Joiner is entitled to the benefits set out in paragraph (6) where that Joiner—

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

(6) Those benefits are—

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

### **Lump sum payable on the death of a Waiting Period Joiner**

**136ZB.**—(1) This regulation applies to a Waiting Period Joiner who, on the date of that Joiner’s death, is an active or a non-contributing member in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) The lump sum payable on the death of a Joiner referred to in paragraph (1) shall be calculated in accordance with whichever of paragraphs (3) to (6) applies to that Joiner and shall be paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Joiner's later 2008 Section service under regulation 83.

(3) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member who had not reached age 65 and who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 52(5) to which that deceased Joiner would have been entitled at that date, multiplied by five.

(4) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member who had reached age 65 and who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 45 to which that deceased Joiner would have been entitled at that date, multiplied by five.

(5) Where, at the date of a Waiting Period Joiner's death, that Joiner was a non-contributing member who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension to which that Joiner would have been entitled under regulation 45 on the last day of that Joiner's pensionable service, multiplied by five.

(6) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member or a non-contributing member who had exercised the option under regulation 49, the lump sum referred to in paragraph (2) shall be determined by the Department after taking advice from the Scheme actuary.

### **Children's pensions payable on the death of a Waiting Period Joiner**

**136ZC.**—(1) This regulation applies in respect of a Waiting Period Joiner's service in this Section of the Scheme, where at the date of that Joiner's death that Joiner was an active, non-contributing, pensioner or deferred member who was entitled to a pension under the 1995 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was an active or non-contributing member, "relevant service" for the purposes of paragraph (4) of regulation 76 shall have the meaning given in paragraph (3).

(3) "Relevant service" means—

(a) in the case of a deceased Waiting Period Joiner who was, at the date of that Joiner's death, an active member, the greater of—

(i) the pensionable service that Joiner was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 52(5) if that Joiner had become entitled to a tier 2 ill-health pension at that date, and

(ii) that Joiner's later 2008 Section service as an active member plus the difference between—

(aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service as an active member; and

(bb) 10 years pensionable service,

where the amount of service in paragraph (aa) is less than that specified in paragraph (bb);

(b) in the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was a non-contributing member, the pensionable service that Joiner was entitled to count under this Section of the Scheme on the date of that Joiner's death.

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(4) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was a pensioner member, "the basic death pension" for the purposes of paragraph (3) of regulation 77 shall have the meaning given in paragraph (5).

(5) The "basic death pension" means the greater of—

- (a) 75% of the deceased Waiting Period Joiner's annual pension (disregarding any additional pension); and
- (b) 75% of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service plus the difference between—
  - (i) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service, and
  - (ii) 10 years pensionable service,

where the amount of service in head (i) is less than that specified in head (ii).

(6) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner's death was a deferred member, "the basic death pension" for the purposes of paragraph (3) of regulation 78 shall have the meaning given in paragraph (7).

(7) The "basic death pension" means—

- (a) if the deceased Waiting Period Joiner died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 76 if that Joiner had died on the day of so ceasing (disregarding any additional pension); and
- (b) if the deceased Waiting Period Joiner died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
  - (i) 75% of the pension to which that Joiner would have been entitled if that Joiner had become entitled to a pension under regulation 45 on the date of death (disregarding any additional pension), and
  - (ii) 75% of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service that has been deferred plus the difference between—
    - (aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service that has been deferred; and
    - (bb) 10 years pensionable service,

where the amount of service in paragraph (aa) is less than that specified in paragraph (bb).]

## PART 3

### BENEFITS FOR PRACTITIONERS ETC.

#### CHAPTER 1

#### INTRODUCTION

#### *Preliminary*

#### **Interpretation of Part 3: general**

137.—(1) In this Part—

[<sup>F329</sup>“2008 Section Optant” has the meaning given in regulation 260A;]

[<sup>F330</sup>“the 2011 Act” means the Finance Act 2011;]

“the 1972 Order” means the Health and Personal Social Services (Northern Ireland) Order 1972 <sup>M42</sup>;

“the 1993 Act” means the Pension Schemes (Northern Ireland) Act 1993 <sup>M43</sup>;

“the 1995 Order” means the Pensions (Northern Ireland) Order 1995 <sup>M44</sup>;

“the 1995 Regulations” means the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 <sup>M45</sup>;

[<sup>F329</sup>“the 1995 section” means the section of the Health and Social Care Pension Scheme as set out in the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;]

“the 1997 Order” means the National Health Service (Primary Care) (Northern Ireland) Order 1997 <sup>M46</sup>;

“the 1999 Order” means the Welfare Reform and Pensions (Northern Ireland) Order 1999 <sup>M47</sup>;

“the 2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 <sup>M48</sup>;

“the 2004 Order” means the General Medical Services Transitional and Consequential Provisions (No.2) (Northern Ireland) Order 2004 <sup>M49</sup>;

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

“active member” has the meaning given in Article 121(1) of the 1995 Order and, except where the context otherwise requires, refers to membership of [<sup>F331</sup>this Section of] the Scheme (but see regulation 180(8));

“additional pension”, in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions made under regulations 165, 167 and 168;

“additional services” with regard to a—

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

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

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

“APMS contractor” means a person—

(a) with whom a Health and Social Services Board has made arrangements under Article 56 (2)(b) of the 1972 Order, and

(b) who has entered into, or would be eligible to enter into, a GMS contract for the provision of primary medical services;

“appropriate proportion” means—



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

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

“bank holiday” means any day that is specified or proclaimed as a bank holiday, pursuant to section 1 of the Banking and Financial Dealings Act 1971 <sup>M50</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 is in force, any equivalent rate determined by the Treasury under that section;

“Board and advisory work” means—

- (a) work undertaken as a member of the Board of an employing authority which is not a GMS practice, an APMS contractor or an OOH provider; or
- (b) advisory work commissioned by and undertaken on behalf of such an authority, if it is connected to the authority’s role in performing, or securing the delivery of, primary medical services or associated management activities or similar duties,

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

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

[<sup>F329</sup>“capped increase to pensionable earnings” must be read in accordance with regulation 231;]

<sup>F332</sup>  
...

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

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

“certification services” means services related to the provision of medical certificates listed in Schedule 3 to the GMS Contracts Regulations;

“chapter” unless otherwise specified, means a chapter in this Part;

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

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

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

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- (a) a GP performer, a GMS practice, an APMS contractor or an OOH provider; and
- (b) a Health and Social Services Board under Article 56 of the 1972 Order;
- “contracting-out requirements” means the requirements mentioned in section 5(2) of the 1993 Act;
- “contribution option period” has the meaning given in regulation 165(8);
- [<sup>F333</sup>“corresponding 1995 scheme” means a corresponding health service scheme, the provisions of which the Department has determined correspond to the provisions of the 1995 Regulations;
- “corresponding 2008 scheme” means a corresponding health service scheme, the provisions of which the Department has determined correspond to the provisions of these Regulations;]
- [<sup>F334</sup>“corresponding health service scheme” means—
- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972 and having effect in England, Wales and Scotland,
- (b) [<sup>F335</sup>a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), in the case of a member who entered HSC employment on or before the 1st April 2012, and]
- (c) any other occupational pension scheme approved for the purposes of this regulation by the Department;]
- “core hours” means the period beginning at 8am and ending at 6:30pm on any day from Monday to Friday except Good Friday, Christmas Day and a bank holiday;
- “deferred member” has the meaning given in Article 121(1) of the 1995 Order and, except where the context requires otherwise, refers to membership of [<sup>F331</sup>this Section of] the Scheme (but see regulation 180(8));
- “dental performers list” means a list of dental practitioners prepared by the Agency in accordance with regulations made under the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993 <sup>M51</sup>;
- “dentist performer” means a dental practitioner who has undertaken to provide general dental services and whose name is included in a dental performers list;
- “Department” means the Department of Health, Social Services and Public Safety;
- “dependent child” is to be construed in accordance with regulation 202;
- “dispensing services” means the provision of drugs, medicines or appliances that may be provided as pharmaceutical services by a registered medical practitioner in accordance with arrangements made under Part III of the Pharmaceutical Services Regulations (Northern Ireland) 1997 <sup>M52</sup>;
- [<sup>F329</sup>“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000;]
- “employing authority” means—
- (a) <sup>F336</sup> ...
- (b) <sup>F336</sup> ...
- (c) <sup>F336</sup> ...
- (d) any other body which is constituted under an Order relating to health services and which the Department agrees to treat as an employing authority for the purposes of the Scheme,
- (e) an OOH provider,

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- (f) an APMS contractor,
- (g) a GMS practice,
- (h) a PMS practice,
- (i) a host Board; and
- (j) in relation to a person who is subject to a direction made under Article 12 (5) of the Superannuation (Northern Ireland) Order 1972, and subject to such modifications to this Part as the Department may in any particular case direct, any employer of such a person whom the Department agrees to treat as an employing authority for the purposes of this Part;
- (k) [<sup>F337</sup>“Health and Social Care Trust (HSC Trust)” established under section 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (l) “Regional Health and Social Care Board (RHSCB)” established under section 7(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (m) “Regional Business Services Organisation (RBSO)” established under section 14(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (n) “Patient and Client Council (PCC)” established under section 16(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- (o) “Regional Agency for Public Health and Social Wellbeing (RAPHSW)” established under section 12(1) of the Health and Social Care (Reform) Act (Northern Ireland) 2009]

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

“enhanced services” with regard to—

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

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

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

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

[<sup>F338</sup>“general ophthalmic services” has the meaning given by regulation 2(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007;]

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

“GMS Contracts Regulations” means the Health and Personal Social Services (General Medical Services Contracts) Regulations (Northern Ireland) 2004<sup>M53</sup>;

“GMS practice” means—

- (a) a registered medical practitioner [<sup>F339</sup>who is a principal medical practitioner] ; or
- (b) two or more [<sup>F339</sup>such] individuals practising in partnership; or
- (c) a company limited by shares,

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

[<sup>F340</sup>“GOS arrangements” has the meaning given by regulation 13 of General Ophthalmic Services Regulations (Northern Ireland) 2007;]

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

- (a) under a GMS contract or APMS contract; or
- (b) on behalf of an OOH provider; or
- (c) under a contract of service or for services with a Health and Social Services Board which relates to arrangements under which it provides primary medical services under Article 56 of the 1972 Order;

“GP provider” means a GP performer who is—

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

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

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

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

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

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

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

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

[<sup>F341</sup>“host Board”—

- (a) in respect of a person who is a [<sup>F342</sup>principal medical practitioner] or non-GP provider who is—
  - (i) a partner in a partnership that is a GMS practice,
  - (ii) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services,
  - (iii) a shareholder in a company limited by shares that is a GMS practice or an APMS contractor that has entered into an APMS contract for the provision of primary medical services,
  - (iv) an individual who is a GMS practice or an APMS contractor,

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

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

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“HSC employment” means employment with an employing authority;

<sup>F332</sup> ...

“lifetime allowance”, in relation to a person, has the meaning given in section 218 of the Finance Act 2004<sup>M54</sup>;

“locum practitioner” means a registered medical practitioner (other than a GP Registrar) whose name is included in a medical performers list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract for services by—

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

to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services or collaborative services (or any combination thereof);

“lower earnings limit” must be read in accordance with section 5 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>M55</sup>;

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

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

“member”, except where the context otherwise requires, means an active member, [<sup>F343</sup>a non-contributing member,] a deferred member, a pensioner member or a pension credit member;

“medical performers list” means a list of registered medical practitioners prepared and published in accordance with the Health and Personal Social Services (Primary Medical Services Performers Lists) Regulations (Northern Ireland) 2004<sup>M56</sup>;

[<sup>F344</sup>“non-contributing member” means a member who—

- (a) is under the age of 75 and in HSC employment;
- (b) is no longer required to make contributions to [<sup>F331</sup>this Section of] the Scheme in accordance with regulation 160(1); but
- (c) will be entitled to a pension under these Regulations—
  - (i) on ceasing to be employed in HSC employment and making a claim for the pension, or
  - (ii) upon reaching age 75;]

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

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

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

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the 1993 Act which—

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

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

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

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

[<sup>F345</sup>“OOH services” means services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice or APMS contractor to patients to whom the practice or contractor is required by its GMS contract or APMS contract to provide essential services, would be or would be similar to essential services;]

[<sup>F346</sup>“ophthalmic provider” means a registered medical practitioner who [<sup>F347</sup>is a principal medical practitioner and who] is included in an ophthalmic performers list kept by the Agency pursuant to regulation 8(1) of the General Ophthalmic Services Regulations (Northern Ireland) 2007 and is a party to GOS arrangements;]

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

“out of hours period” means—

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

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“pay period” means—

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

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

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

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

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

“pensioner member” has the meaning given in Article 121(1) of the 1995 Order and, except where the context otherwise requires, refers to membership of [<sup>F331</sup>this Section of] the Scheme (but see regulation 138 and regulation 180(8));

“pension credit” means a credit under Article 26 (1) (b) of the 1999 Order and includes a credit under section 29(1)(b) of the Welfare Reform and Pensions Act 1999 <sup>M57</sup>;

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

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

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

[<sup>F329</sup>“pension debit member” means a member of this Section of the Scheme whose benefits, or future benefits, under this Scheme have been reduced under Article 28 of the 1999 Order (Reduction under pension sharing order following divorce or nullity of marriage), whether before or after the member became a member of this Section of the Scheme;]

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

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

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

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

“practice staff” means a person who—

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

“practitioner” means—

- (a) a registered medical practitioner [<sup>F348</sup>or ophthalmic provider,] who—
  - (i) is not a GP Registrar, and

- (ii) is a locum practitioner, a GP provider or a GP performer, or
  - (b) a dentist performer; <sup>F349</sup>or
  - (c) an ophthalmic provider]
- “practitioner income” has the meaning given in regulation 143(2) to (8);
- “practitioner service” means service as a practitioner which is pensionable under this Part;
- “preservation requirements” means the requirements of Chapter 1 of Part IV of the 1993 Act relating to the preservation of benefits under occupational pension schemes;
- “principal medical practitioner” means a practitioner on the medical performers list;
- “principal dental practitioner” means a practitioner whose name is included in a list of dentists prepared by the Agency under regulation 4 of the Health and Personal Social Services General Dental Services Regulations (Northern Ireland) 1993<sup>M58</sup>;
- “public sector transfer arrangements” means arrangements approved by the Department as providing reciprocal arrangements for the payment and receipt of transfer values between <sup>F331</sup>this Section of] the Scheme and other occupational pension schemes;
- “qualifying service” has the meaning given in regulation 141 (read with regulation 142);
- “quarter” means a 3 month period ending on the last day of March, June, September or December;
- “recent leaver” has the meaning given in regulation 199(3);
- “registered” means registered under Chapter 2 of Part 4 of the Finance Act 2004;
- <sup>F350</sup>“registered medical practitioner” has the meaning given in section 55 of the Medical Act 1983;]
- “retail prices index” has the meaning given in section 989 of the Income Tax Act 2007<sup>M59</sup>;
- “safeguarded percentage” has the meaning given by section 64A(3) of the 1993 Act;
- “safeguarded rights” has the meaning given by section 64A(1) of the 1993 Act;
- <sup>F351</sup>“the Scheme” means the Health and Social Care Pension Scheme as set out in these regulations and the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995;]
- “the Scheme actuary” means the actuary appointed by the Department for the time being to provide a consulting service on actuarial matters relevant to the Scheme;
- “scheme year” means a period of one year beginning with 1st April and ending with 31st March next following;
- “specialist” means a consultant, other than a nurse consultant, or a senior hospital medical officer or senior hospital dental officer;
- “State pension age” means pensionable age, as defined in section 176(1) of the 1993 Act;
- “tax year” means a year of assessment for income tax purposes;
- “tier 1 ill-health pension” must be read in accordance with regulation 182;
- “tier 2 ill-health pension” must be read in accordance with regulation 182;
- “trade dispute” has the meaning given in Article 2 (2) of the Jobseekers (Northern Ireland) Order 1995<sup>M60</sup>;
- “uprated earnings” is to be construed in accordance with regulation 176 (4) (b);
- “vocational trainee” means a dentist performer who is employed as a vocational trainee as a consequence of a placement arrangement made by a local postgraduate dental dean or a director of postgraduate dental education;



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[<sup>F350</sup>“Waiting Period Joiner” has the meaning given in regulation 260X;]

### Textual Amendments

- F329** Words in reg. 137(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **56**
- F330** Words in reg. 137(1) inserted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **17**
- F331** Words in reg. 137(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F332** Words in reg. 137(1) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **56(4)**
- F333** Words in reg. 137 inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(a)** (with reg. 89)
- F334** Words in reg. 137 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(b)** (with reg. 89)
- F335** Words in reg. 137(1) substituted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **17**
- F336** Words in reg. 137(1) omitted (with effect in accordance with reg. 1(4)(f) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **56(3)(b)**
- F337** Words in reg. 137(1) inserted (with effect in accordance with reg. 1(4)(f) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **56(3)(a)**
- F338** Words in reg. 137 inserted (with effect in accordance with reg. 1(6) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(c)** (with reg. 89)
- F339** Words in reg. 137 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 35(a)**, reg. 1(2)
- F340** Words in reg. 137 inserted (with effect in accordance with reg. 1(6) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(d)** (with reg. 89)
- F341** Words in reg. 137(1) substituted (with effect in accordance with reg. 1(4)(f) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature

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- Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **56(5)(b)**
- F342** Words in reg. 137 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 35(b)**, reg. 1(2)
- F343** Words in reg. 137 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **50(a)**
- F344** Words in reg. 137 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **50(b)**
- F345** Words in reg. 137 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(f)** (with reg. 89)
- F346** Words in reg. 137 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(h)** (with reg. 89)(as inserted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(g)** (with reg. 89))
- F347** Words in reg. 137 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 35(c)**, reg. 1(2)
- F348** Words in reg. 137 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **52(i)** (with reg. 89)
- F349** Words in reg. 137 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 35(d)**, reg. 1(2)
- F350** Words in reg. 137 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 35(e)**, reg. 1(2)
- F351** Words in reg. 137(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **56(5)(a)**

#### Marginal Citations

- M42** S.I.1972/1265 (N.I. 14)  
**M43** 1993 c. 48  
**M44** 1995 c. 26

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- M45** S.R. 1995 No. 95, as amended by S.R. 1997 Nos. 217 and 390, S.R. 1998 No. 299, S.R. 1999 No. 293, S.R. 2002 No. 69, S.R. 2004 Nos. 103 and 104, S.R. 2005 Nos. 155, 533, 534 and 565, S.R. 2006 Nos. 159 and 410 and S.Rs. 2008 Nos. 96, 130 and 163
- M46** 1997/1177 (N.I. 7)
- M47** 1999/3147 (N.I. 11)
- M48** S.I. 2003/1250 as amended by S.I. 2007/3101
- M49** S.R. 2004 No. 156
- M50** 1971 c. 80
- M51** S.R. 1993 No. 326
- M52** S.R. 1997 No. 381
- M53** S.R. 2004 No. 140 as amended by S.R. 2005 No. 230
- M54** 2004 c. 12
- M55** 1992 c. 7
- M56** S.R. 2004 No. 149 as amended by S.R. 2005 No. 368
- M57** 1999 c. 30
- M58** S.R. 1993 No. 326
- M59** 2007 c. 3
- M60** S.I. 1995/2705 (N.I. 15)

### Interpretation: further provisions

**138.**—(1) In determining whether a person who is an active member or a pensioner member of [<sup>F352</sup>this Section of] the Scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person's rights as such are to be disregarded.

(2) In determining whether a person is a pensioner member of [<sup>F352</sup>this Section of] the Scheme, the fact that the person is not entitled to payment of pension because of Chapter 8 is to be disregarded.

#### Textual Amendments

**F352** Words in [reg. 138\(1\)\(2\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)

### Meaning of “pensionable service”

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

- (a) any period of service in respect of which the member contributes to [<sup>F353</sup>this Section of] the Scheme under regulation 160 (contributions by members),
- (b) any period of absence from service which counts as pensionable service under regulation 140,
- (c) any period of service credited to the member as pensionable service under Chapter 6 (transfers from other pension arrangements)[<sup>F354</sup>], and
- (d) any period of pensionable service the member is entitled to count under Chapter 10 of this Part.]

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

- (a) any period of service in respect of which the Department has paid contributions to another occupational pension scheme in respect of the member,

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- (b) in the case of a pensioner member or deferred member, any period taken into account—
  - (i) in determining the member's entitlement to the pension in payment or, as the case may be, the deferred pension, or
  - (ii) in calculating the amount of that pension,but, in the case of a pensioner member or deferred member entitled to a pension under regulation 180 (partial retirement) subject to paragraph (7),
- (c) any period of service in respect of which the Department's liability to provide benefits is discharged—
  - (i) by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act,
  - (ii) under regulation 175 (repayment of contributions), or
  - (iii) by the payment of a transfer value payment on transfer out under Chapter 6 (transfers), or
- (d) subject to paragraph (3), any period of service which would result in the aggregate mentioned in paragraph (1) exceeding 45 years.
- (3) A member's pensionable service must not exceed 45 years unless—
  - (a) the member gives notice in writing to the Department and the member's employing authority of an intention to remain in pensionable service beyond 45 years; and
  - (b) that notice is received by the Department and the member's employing authority—
    - (i) not earlier than three months before the member reaches 45 years pensionable service, and
    - (ii) by the end of the pay period during which the member reaches the 45 year limit.
- (4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years—
  - (a) benefits under this Part shall be calculated by reference to a maximum of 45 years of pensionable service; and
  - (b) the Department shall select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result to the member.
- (5) For the purposes of paragraph (4)(b), in order to calculate the length of a member's pensionable service, all periods of pensionable service will be added together and each resulting period of 365 days (disregarding pensionable service on 29th February in a leap year) will be treated as one year.
- (6) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purpose of this Part—
  - (a) the member's pensionable service is treated as continuing for a period equal to the period of leave in respect of which payment is made, and
  - (b) the payment is treated as the member's pensionable earnings for that period.
- (7) In the case of a pensioner member or deferred member entitled to a pension under regulation 180 (partial retirement), paragraph (2)(b) only applies to so much of the member's pensionable service as is mentioned in regulation 180(8)(a) (the specified percentage of the pensionable service as respects which the member is an active member on the option day).
- (8) References in this Part to any period expressed in days are references to the period in question ignoring 29th February, expressed in days.
- <sup>F355</sup>(9) Where a member is also a member of the <sup>F356</sup>1995 Section] any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

SP=45yearsLSS

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where—

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

LSS is the length of superannuable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the [<sup>F356</sup>1995 Section] and, in the case of a member of that Scheme who has become entitled to a pension (including a preserved pension) under that Scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.]

#### Textual Amendments

- F353** Words in reg. 139(1)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F354** Reg. 139(1)(d) and worded added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **57**
- F355** Reg. 139(9) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **53** (with reg. 89)
- F356** Words in reg. 139(9) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**

#### Pensionable service: breaks in service

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

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

(2) [<sup>F357</sup>A] period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to [<sup>F358</sup>this Section of] the [<sup>F359</sup>Scheme under regulation 160 in respect of the period of absence].

[<sup>F360</sup>(3) If a member is on leave of absence but does not fall within paragraph (1)(a) to (e), and contributes to [<sup>F358</sup>this Section of] the Scheme under regulation 160 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member's leave of absence, 6 months; and
- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member's leave of absence, the period in respect of which the member pays those contributions.

(3A) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to [<sup>F361</sup>this Section of] the Scheme both member contributions under regulation 160 and employer contributions under regulation 162 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.]

(4) This paragraph applies if a person—

- (a) ceased to be an active member because of—
  - (i) ceasing to be employed in an employment in which the person is eligible to be such a member, or
  - (ii) exercising the option under regulation 157 (opting out of [<sup>F362</sup>this Section of] the Scheme), and
- (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.

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

(6) This paragraph applies if—

- (a) the person does not become a deferred member in respect of the pensionable service before the break in which the person was an active member,
- (b) the person has received a repayment of contributions under regulation 175 in respect of that service (but see paragraph (8)), or
- (c) the person's rights under [<sup>F363</sup>this Section of] the Scheme in respect of that service have been extinguished under regulation 226 because a transfer value payment has been made in respect of them.

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

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

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

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

(9) For the regulations where paragraph (5) applies because the person has become a deferred member in respect of the service in which the person was an active member and becomes an active member again, see Chapter 7 (re-employment and rejoining [<sup>F364</sup>this Section of] the Scheme).



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### Textual Amendments

- F357** Word in reg. 140(2) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **54(2)(a)** (with reg. 89)
- F358** Words in reg. 140(2)(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F359** Words in reg. 140(2) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **54(2)(b)** (with reg. 89)
- F360** Reg. 140(3)(3A) substituted for reg. 140(3) (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **54(3)** (with reg. 89)
- F361** Words in reg. 140(3A) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F362** Words in reg. 140(4)(a)(ii) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F363** Words in reg. 140(6)(c) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F364** Words in reg. 140(9) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### *Qualifying service*

#### Meaning of “qualifying service”

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

- (a) the member's pensionable service under this Part other than such pensionable service as is referred to in regulation 139(1)(c) (transferred-in service);
- (b) in the case of a person in respect of whom a transfer value in respect of his rights under another pension arrangement [<sup>F365</sup>(including the [<sup>F366</sup>1995 Section] )] has been accepted under Chapter 6 (transfers), a period equal to the person's period as an active member in any occupational pension scheme in respect of which the rights accrued;
- (c) any period treated as qualifying service under paragraph (3) or under regulation 142;
- (d) where the member ceased to be an active member under Part 2 not more than 12 months before becoming a member under this Part, any period of qualifying service under Part 2.

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- [<sup>F367</sup>(e) in the case of a person—
- (i) who is eligible to join [<sup>F368</sup>this Section of] the Scheme by virtue of regulation 153(5)(c), and
  - (ii) for whom the interval between leaving the HPSS Superannuation Scheme 1995 and joining [<sup>F368</sup>this Section of] the Scheme is less than one month
- a period equal to the period of qualifying service (within the meaning of the 1995 Regulations), measured in years and days, that the member was entitled to count under regulation 5 of the 1995 Regulations when the member left that scheme.][<sup>F369</sup>, <sup>F370</sup> ...
- (f) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 10 of this Part.]
- [<sup>F371</sup>(g) in the case of a Waiting Period Joiner referred to in regulation 260X, a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and
- (h) in the case of a person who is eligible to join this section of the Scheme by virtue of regulation 153(5)(e), (g) or (h) (Eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section.]
- (2) Paragraph (3) applies if the member is a locum practitioner who—
- (a) ceases to be engaged as such a practitioner and so ceases to be treated as being in pensionable service; and
  - (b) is re-engaged as a locum practitioner before the expiry of a period not exceeding three months from the date of such cessation.
- (3) Where this paragraph applies—
- (a) a locum practitioner is treated as continuing to be in qualifying service during the period of non-engagement as such a practitioner and is not required to re-join [<sup>F372</sup>this Section of] the Scheme on being re-engaged as a locum practitioner; and
  - (b) that period does not count as practitioner service.
- [<sup>F373</sup>(4) For the other rules applying where there is a short break in service, see regulation 142.]

### Textual Amendments

- F365** Words in reg. 141(1)(b) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), regs. 1(2), **55(2)** (with reg. 89)
- F366** Words in reg. 141(1)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 2**
- F367** Reg. 141(1)(e) added (with effect in accordance with reg. 1(5) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), regs. 1(2), **55(3)** (with reg. 89)
- F368** Words in reg. 141(1)(e) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**



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- F369** Reg. 141(1)(f) and word added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **58**
- F370** Word in reg. 141(1)(e) omitted (9.2.2012) by virtue of The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(4), **21(2)**
- F371** Reg. 141(1)(g)(h) added (9.2.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), **regs.**, 1(4) 21((3)
- F372** Words in reg. 141(3)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F373** Reg. 141(4) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **55(4)** (with reg. 89)

*Qualifying service: disregard of breaks in service*

**142.**—(1) This regulation applies for the purpose of calculating the qualifying service of a member whose pensionable service ceases for an interval (other than in circumstances where regulation 141(3) applies).

- (2) If the interval—
- (a) does not exceed one month, or
  - (b) is due to a trade dispute,

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

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

- (4) If—
- (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to [<sup>F374</sup>this Section of] the Scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment, and
  - (b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

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

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

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

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

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

- (a) the person has received a repayment of contributions under regulation 175 in respect of the earlier period (but see paragraph (7)); or
- (b) the person's rights under [<sup>F375</sup>this Section of] the Scheme in respect of that period have been extinguished under regulation 226 because a transfer value payment has been made.

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

(8) If—

- (a) a member is a deferred member or pensioner member in respect of the period of pensionable service before pensionable service ceases for an interval, and
- (b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 140(5) or regulation 238(2)(a),

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

#### Textual Amendments

- F374** Words in reg. 142(4)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**
- F375** Words in reg. 142(6)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

#### *Pensionable earnings*

#### Meaning of “pensionable earnings”

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

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

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

- (a) income that accrues to the principal medical practitioner which is derived from—
  - (i) a GMS contract;
  - (ii) an APMS contract;
  - (iii) payments from, or to, a practitioner who is a GMS practice or an APMS contractor in respect of the performance of certification services, commissioned services or collaborative services;
  - (iv) his engagement by a Health and Social Services Board to assist in the provision of primary medical services under Articles 57 and 57A of the 1972 Order;
  - (v) in the case of a principal medical practitioner, the provision of locum services;
  - (vi) payments made to a principal medical practitioner by an OOH provider [<sup>F376</sup>or other employing authority providing OOH services] in respect of the performance of primary medical services, commissioned services, collaborative services and certification services;
  - (vii) payments made to a principal medical practitioner by an employing authority in respect of primary dental services, general ophthalmic services or pharmaceutical services provided by the practitioner;
  - (viii) practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners;
- (b) any charges collected from patients in respect of the services mentioned in subparagraph (a) which the principal medical practitioner is authorised by or under any statutory provision to retain, other than charges authorised by regulations made under Article 98 of, and Schedule 15 to, the 1972 Order;
- (c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital; and
- (d) in the case of a principal medical practitioner, allowances and any other sums (but excluding payments made to cover expenses) paid in respect of Board and advisory work.

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

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

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

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

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

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

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

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

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

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

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

[<sup>F377</sup>(10) The pensionable earnings of a principal practitioner include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 10 of this Part.]

#### Textual Amendments

**F376** Words in reg. 143(2)(a)(vi) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), 56 (with reg. 89)

**F377** Reg. 143(10) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), 59

#### Pensionable earnings — breaks in service

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

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

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

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- (a) for the purpose of calculating the member's contributions to [<sup>F378</sup>this Section of] the scheme under [<sup>F379</sup>regulations 160 and 161], pensionable earnings for the period of absence will be calculated on the basis of the member's reduced earnings; and
- (b) for all other purposes, the member's pensionable earnings for the period of absence will be calculated in accordance with paragraph (3)(a) or (b).
- (3) In the case of a member who—
- (a) is one of a number of practitioners or non-GP providers who have elected as described in regulation 145(2), each practitioner's or non-GP provider's pensionable earnings will be calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased; and
- (b) (except where the member's pensionable earnings fall to be calculated as described in sub-paragraph (a)), that member will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or ceased.
- (4) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies—
- (a) a practitioner falling within paragraph (1)(a) will, subject to sub-paragraph (b), be treated as having continued in pensionable employment for a period of 12 months from the date on which the member's earnings ceased and the member will not be treated as having left pensionable employment until the end of that 12 month period;
- (b) a member falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (3) (a) will, subject to paragraph (6), continue to pay contributions at that rate, except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment.
- (5) For the purposes of paragraph (4)(a)—
- (a) during the 12 month period, the member's pensionable earnings will be calculated as described in paragraph (3)(a) or (b);
- (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit will be payable until the member actually leaves employment.
- (6) For the purposes of paragraph (4)(b), the rate of contributions payable shall be the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (2)(a) had the member's reduced earnings excluded any earnings for a day during which the member, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.
- (7) If a member fails to pay any contributions which are required to be paid to [<sup>F380</sup>this Section of] the Scheme in respect of a period of absence to which this regulation applies, the member will be treated as having left pensionable employment except that no refund of contributions or other benefit shall be payable unless the member actually leaves pensionable employment.
- (8) If a member to whom this regulation applies leaves pensionable employment or, by virtue of paragraph (5)(b) or (7), is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment regulation 142(4) (b) will apply as if the reference to 12 months was a reference to 3 years.
- (9) The benefits payable on the death of a member whose earnings ceased during a period of absence to which this regulation applies will be calculated as if the member had died in pensionable employment on the day before his earnings ceased.

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[<sup>F381</sup>(10) For the purposes of making contributions to [<sup>F382</sup>this Section of] the Scheme under regulations 160 and 162, during any period of absence which counts as pensionable service under regulation 140(3) or (3A), amounts equal to the rate of the member's pensionable earnings calculated as described in paragraph (3)(a) or (b) will be treated as pensionable earnings.]

#### Textual Amendments

- F378** Words in reg. 144(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F379** Words in reg. 144(2)(a) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **57(2)** (with reg. 89)
- F380** Words in reg. 144(7) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F381** Reg. 144(10) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **57(3)** (with reg. 89)
- F382** Words in reg. 144(10) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### Calculating pensionable earnings of medical practitioners in partnership

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

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

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

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

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Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

**Elections relating to calculation of pensionable earnings in medical partnerships**

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

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

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

(4) A notice given under this regulation—

(a) will take effect—

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

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

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

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

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

F383 147. ....

**Textual Amendments**

F383 Reg. 147 omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\)](#), and [Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), 60

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

F384 148. ....

**Textual Amendments**

F384 Reg. 148 omitted (14.3.2012) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\)](#), [Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), regs. 1(2), 22

**Meaning of pensionable earnings in relation to other practitioners**

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

(a) all salary, wages, fees and other regular payments paid to the practitioner by an employing authority in respect of the performance of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services,



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certification services, collaborative services, general dental services or pharmaceutical services;

- (b) allowances and other sums (but excluding payments made to cover expenses) paid by an employing authority in respect of Board and advisory work;
- (c) earnings from practice-based work carried out in educating or training, or organising the education or training of, GP Registrars or practitioners,

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

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

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

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

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

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

<sup>F385</sup>(5) The pensionable earnings of an assistant practitioner or a locum practitioner, include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 10 of this Part.]

#### Textual Amendments

**F385** Reg. 149(5) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **61**

#### Exclusions and deductions from pensionable earnings — all practitioners

**150.** Any sum that is withheld or otherwise recovered from a practitioner under regulation 26 of and Schedule 5 to the Health and Personal Social Services (General Medical Service Contracts) Regulations (Northern Ireland) 2004 <sup>M61</sup> will be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Department may approve.

#### Marginal Citations

**M61** S.R. 2004 No. 140

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

**151.** In the case of a dentist performer employed by persons carrying on a deceased practitioner's dentistry business, pensionable earnings cannot exceed the total of the amount paid to him by those



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persons, plus any amounts paid to him by a Health and Social Services Board that those persons allow him to retain.

### Out of hours providers

- 152.—**(1) For the purposes of these Regulations, an OOH provider is—
- (a) a company limited by guarantee (which is not otherwise an employing authority)—
    - (i) in which all the members of the company are registered medical practitioners, APMS contractors or GMS practices and the majority of those members are—
      - (aa) APMS contractors or GMS practices whose APMS contracts, GMS contracts require them to provide OOH services; or
      - (bb) registered medical practitioners who are partners or shareholders with an APMS contractor or in a GMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract or APMS contract,
    - (ii) which has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services, and
    - (iii) in respect of which a Health and Social Services Board appointed by the Department to act on its behalf—
      - (aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
      - (bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
      - (cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or
  - (b) some other body corporate (which is not otherwise an employing authority) which—
    - (i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
    - (ii) operates on a not-for-profit basis;
    - (iii) is not an associated company in relation to another person;
    - (iv) has memorandum or articles or rules that—
      - (aa) prohibit the payment of dividends to its members; and
      - (bb) require its profits (if any) or other income to be applied to promoting its objects, and
      - (cc) require all the assets which would otherwise be available to its members generally to be transferred on its winding up either to another body which operates on a not-for-profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto,
    - (v) has at least one member who is—
      - (aa) an APMS contractor or a GMS practice; or
      - (bb) a partner in a partnership that is an APMS contractor or a GMS practice; or
      - (cc) a shareholder in a company limited by shares that is an APMS contractor or a GMS practice,

- (vi) has a contract with a Health and Social Services Board, an APMS contractor or a GMS practice for the provision of OOH services, and
- (vii) is approved as an employing authority by a Health and Social Services Board appointed by the Department to act on its behalf—
  - (aa) pursuant to a written application made by the body to it for that purpose; and
  - (bb) that Health and Social Services Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (2) For the purposes of paragraph (1)(b)(iii)—
  - (a) a body corporate is to be treated as another person's associated company if that person has control of it, except if that person is an employing authority; and
  - (b) a person shall be taken to have control of a body corporate if he exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over its affairs.
- (3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written application to a Health and Social Services Board appointed by the Department to act on its behalf (“the appointed Health and Social Services Board”).
- (4) An application referred to in paragraph (3) may specify the date from which approval by the appointed Health and Social Services Board (if given) shall have effect (“the nominated date”).
- (5) If a company limited by guarantee or other body corporate makes an application and—
  - (a) the appointed Health and Social Services Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and
  - (b) it approves that application,that approval shall take effect on the later of the nominated date and the approval date.
- (6) If paragraph (5) applies, HSC employment shall be treated as commencing on the later of the nominated date (if any) and the approval date.
- (7) For the purposes of this regulation the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be.
- (8) The appointed Health and Social Services Board may give an OOH provider a notice in writing terminating its participation in <sup>F386</sup>[this Section of] the scheme where that provider—
  - (a) does not have in force a guarantee, indemnity or bond as required by the Department in accordance with regulation 163;
  - (b) has ceased to satisfy the conditions for approval;
  - (c) has notified the Health and Social Services Board that any one of the following events has occurred in respect of it—
    - (i) a proposal for a voluntary arrangement has been made or approved under Part II of the Insolvency (Northern Ireland) Order 1989 <sup>M62</sup> (“the 1989 Order”); or
    - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Part III of the 1989 Order; or
    - (iii) a receiver, manager or administrative receiver has been appointed under Part IV of the 1989 Order; or
    - (iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part V or Part VI of the 1989 Order or an instrument of dissolution has been drawn up in accordance with

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section 67 of the Industrial and Provident Societies (Northern Ireland) Act 1969<sup>M63</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 of the Companies (Northern Ireland) Order 1986<sup>M64</sup>.

(9) An OOH provider—

- (a) must give the appointed Health and Social Services Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event;
- (b) that wishes to cease to participate in [<sup>F387</sup>this Section of] the Scheme must give the appointed Health and Social Services Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.

(10) An OOH provider must cease to participate in [<sup>F388</sup>this Section of] the Scheme on—

- (a) such date as the appointed Health and Social Services Board may specify in a notice under paragraph (8);
- (b) the day upon which the period referred to in paragraph (9)(b) expires if a notice under that provision has been given.

#### Textual Amendments

**F386** Words in reg. 152(8) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F387** Words in reg. 152(9)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F388** Words in reg. 152(10) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### Marginal Citations

**M62** S.I. 1989/2405 (N.I. 19)

**M63** 1969 c. 24

**M64** S.I. 1986/1032 (N.I. 6)

## CHAPTER 2

### MEMBERSHIP

#### Eligibility: general

**153.**—(1) A person is eligible to be an active member of [<sup>F389</sup>this Section of] the Scheme if conditions A to C are met and the person is not prevented by regulation 154, 155 or 158.

(2) Condition A is that the person is in practitioner service.

(3) Condition B is that the person—

- (a) enters practitioner service on or after 1st April 2008<sup>F390</sup> ..., or

- (b) entered that service before that date and on that date was not an active member of the [F391 1995 Section] in that service or any other HSC employment.
- [F392 and meets any one of the [F393 other Section conditions] (see paragraph (5))]
- (4) Condition C is that the person has not reached the age of 75.
- (5) The “ [F394 other Section conditions] ” are that—
- (a) the person has not previously been an active member of the [F395 1995 Section] ;
  - (b) the person ceased to be an active member of the [F395 1995 Section] 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 [F396 that Section] ;
  - (c) the person ceased to be an active member of the [F395 1995 Section] 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 [F396 that Section] and has received a repayment of contributions in respect of that membership; or
  - (d) the person ceased to be an active member of the [F395 1995 Section] on leaving HSC employment and before the person re-entered such employment—
    - (i) a transfer payment was made in respect of the person under Part VI of [F396 that Section] , or
    - (ii) the person made an application under regulation 54 of [F396 that Section] (exercising a right to transfer or buy-out) from which the person may not withdraw,
- F397 ...
- [F398 (e) the person—
- (i) ceased to be an active member of the [F395 1995 Section] on leaving HSC employment,
  - (ii) became a deferred member of [F396 that Section] on leaving that employment and has not become a pensioner member of [F396 that Section] between the date of leaving that employment and joining [F399 this Section of] the Scheme, and
  - (iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment; or
- (f) the person—
- (i) ceased to be an active member of the [F395 1995 Section] before 1st April 2008 on leaving HSC employment,
  - (ii) became a deferred member of [F396 that Section] on leaving that employment,
  - (iii) re-entered HSC employment on or after 1st October 2008 and 5 or more years since last leaving HSC employment, and
  - (iv) before the person re-entered such employment—
    - (aa) a transfer payment was made in respect of the person under Part VI of [F396 that Section] , or
    - (bb) the person made an application under regulation 54 of [F396 that Section] (Exercising a right to transfer or buy-out) from which the person may not withdraw,
- but sub-paragraphs (d) to (f) will not apply if the Department has permitted such a person to rejoin the [F395 1995 Section] in the circumstances described in regulation 7(3) of the 1995 Regulations.]

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- [<sup>F400</sup>(g) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation 9 of the 1995 Regulations (Opting out of the Scheme) and—
- (i) as result of that notice has been treated as ceasing to be an active member of that Section, and
  - (ii) pursuant to that notice remains opted-out of that Section for five years or more.
- (h) the person is a deferred member of the 1995 Section who has given notice for the purposes of paragraph (1) or (1A) of regulation 9 of the 1995 Regulations (Opting out of the Scheme) and following that notice, has ceased to be an active member of that Section for any one period of five or more years comprising the aggregate of—
- (i) any period during which the person leaves HSC employment, and
  - (ii) any period during which the person is treated as never having been an active member of that Section in accordance with paragraph (3) of regulation 9 of those Regulations in respect of one or more later periods of HSC employment entered into after having given the notice for the purposes of paragraph (1) or (1A) of that regulation;
- (i) the person—
- (i) has given notice for the purposes of regulation 9 of the 1995 Regulations (Opting-out of the scheme) and as a result of that notice all of that person’s HSC employments ceased to be superannuable employment for the purposes of those Regulations,
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations, and
  - (iii) has been treated as ceasing to be in superannuable employment under the 1995 Regulations for a period of 12 months or more;
- (j) the person—
- (i) has given notice for the purposes of regulation 9 of the 1995 Regulations (Opting-out of the scheme) and as a result of that notice all of that person’s HSC employments ceased to be superannuable employment for the purposes of those Regulations,
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations, and
  - (iii) has, in respect of the HSC employments referred to in head (i), either received a repayment of contributions or exercised the right to a transfer payment under Part VI of those Regulations]

(6) This regulation shall apply to any person who has previously been an active member of a corresponding health service scheme as though in paragraphs (3) and (5) any reference to—

    - (a) “[<sup>F401</sup>1995 Section]” includes a reference to that corresponding health service scheme, and
    - (b) “HSC employment” includes a reference to—
      - (i) employment to which regulations made under sections 10 (1) and (2) and 12 (1) and (2) of, and Schedule 3 to, the Superannuation Act 1972 apply,
      - (ii) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 <sup>M65</sup>,
      - (iii) employment to which regulations made under section 10 of the Superannuation Act 1972 <sup>M66</sup> and having effect in Scotland apply,
      - (iv) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies, and

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- (v) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006.

### Textual Amendments

- F389** Words in reg. 153(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F390** Words in reg. 153(3)(a) omitted (with effect in accordance with reg. 1(3)(d) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **62(2)**
- F391** Words in reg. 153(3)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F392** Words in Reg. 153(3) inserted (with effect in accordance with reg. 1(3)(d) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **62(3)**
- F393** Words in reg. 153(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F394** Words in reg. 153(5) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F395** Words in reg. 153(5) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F396** Words in reg. 153 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F397** Words in reg. 153(5)(d) omitted (with effect in accordance with reg. 1(3) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **58(2)** (with reg. 89)
- F398** Reg. 153(5)(e)(f) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **58(3)** (with reg. 89)
- F399** Words in reg. 153(5)(e)(ii) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F400** Reg. 153(5)(g)-(j) added (with effect in accordance with reg. 1(3)(c) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional

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Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 37**, reg. 1(2)

**F401** Words in reg. 153(6)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**

#### Marginal Citations

**M65** 1967 c. 28

**M66** 1972 c. 11

#### [<sup>F402</sup>Eligibility: transitional

**153A.**—(1) A person is eligible to be an active member of this Section of the Scheme if—

- (a) the person is not prevented from being so by regulation 154 or 158; and
- (b) either—
  - (i) the Department has accepted that person’s option to join this Section of Scheme under Chapter 10 of this Part, or
  - (ii) that person meets all of the requirements in paragraph (2).

(2) Those requirements are that the person—

- (a) is under age 75;
- (b) was an active member of the 1995 Section on or after 1st April 2008;
- (c) became a pensioner member of the 1995 Section on, or before, 1st October 2009;
- (d) has either—
  - (i) returned to HSC employment since becoming a pensioner member referred to in sub-paragraph (c), or
  - (ii) commenced for the first time HSC employment; and
- (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in sub-paragraph (d).

This is subject to paragraphs (3) to (8).

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

- (a) 12 (Normal retirement pension);
- (b) 13A(3)(a) (tier 1 ill-health pension on early retirement);
- (c) 14A (Early retirement pension (termination of employment by employing authority)); or
- (d) 16 (Early retirement pension with (actuarial reduction)).

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

- (a) 13 (Early retirement pension (ill health));
- (b) 14 (Early retirement pension (redundancy etc additional provisions)),

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation 13A(3)(b) (tier 2 ill-health pension on early retirement), that person shall be eligible to be an active member of this Section of the Scheme from the day immediately following whichever of the following occurs last —

- (a) the anniversary of that person entering HSC employment; or
  - (b) the end of Waiting Period A.
- (6) A person to whom paragraph (1)(b)(i) or (3)(b) applies and who is entitled to a tier 1 ill-health pension under regulation 13A(3)(a) of the 1995 Regulations, ceases to be eligible to be an active member of this Section of the Scheme from the date the Department makes a determination that that person is entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension under regulation 13B(3) of those Regulations (Re-assessment of ill-health condition determined under regulation 13A).
- (7) For the purposes of this regulation—
- (a) “Waiting Period A” is a period of two calendar years beginning on the day the person becomes entitled to the pension under the 1995 Regulations;
  - (b) “Waiting Period B” is a period beginning on the day the person becomes entitled to the pension under the 1995 Regulations equal to the calendar length of—
    - (i) any increase to the person’s superannuable service in the 1995 Section of the Scheme which has been applied in accordance with paragraph (3) of regulation 13 of the 1995 Regulations; or
    - (ii) any additional service with which the person has been credited in accordance with regulation 5 of the Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983.
- (8) This regulation applies to any person who has previously been an active member of a corresponding 1995 scheme as though any reference to—
- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
  - (b) the “1995 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;
  - (c) regulations “12”, “13”, “13A”, “13A(3)(a)”, “13A(3)(b)”, “13B(3)”, “14”, “14A” or “16” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 1995 Regulations; and
  - (d) “regulation 5 of the Health and Personal Social Services (Compensation for Premature Retirement) Regulations (Northern Ireland) 1983” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.]

#### Textual Amendments

**F402** Reg. 153A substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 38**, reg. 1(2)

#### Restrictions on eligibility: general

- 154.**—<sup>F403</sup>(1) A person is not eligible to be an active member of this Section of the Scheme if the person—
- (a) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or before, 1st April 2008 (except if paragraph (1)(b)(i) of regulation 153A applies to that person); or



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- (b) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on, or after, that date (except if paragraph (1)(b)(i) or (ii) of regulation 153A applies to that person); or
- (c) is a deferred member of the 1995 Section or a corresponding 1995 scheme, but is not a deferred member—
  - (i) to whom regulation 153(5)(e), (f), (g) or (h) applies, and
  - (ii) in respect of whom permission of the Department to rejoin the 1995 Section has not been granted pursuant to regulation 7(3) of that Section.]

(2) A person is not eligible to be an active member of [<sup>F404</sup>this Section of] the Scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under Article 3 or 11 of the Superannuation (Northern Ireland) Order 1972 in respect of service in that employment.

(3) A person who holds an honorary appointment and does not at the same time hold any other employment which entitles him to be a member of [<sup>F404</sup>this Section of] the Scheme is not eligible to be an active member of [<sup>F404</sup>this Section of] the Scheme.

(4) A person is not eligible to be an active member of [<sup>F404</sup>this Section of] the Scheme in any further employment if the person—

- (a) becomes entitled to a tier 2 pension under regulation 182, and
- (b) opts to exchange that pension for a lump sum in accordance with regulation 186.

(5) A person who is entitled to the immediate payment of a pension under [<sup>F404</sup>this Section of] the Scheme under a regulation that requires the person not to be in HSC employment may only be an active member in accordance with—

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

<sup>F405</sup>(6) A person is not eligible to be an active member of [<sup>F404</sup>this Section of] the Scheme in any future employment if the person—

- (a) ceases to be entitled to a tier 1 ill-health pension under regulation 182; and
- (b) becomes entitled to a tier 2 ill-health pension under that regulation on the date the Department makes a determination under regulation 183(3).

This is subject to paragraph (7).

(7) A person to whom paragraph (6) applies is eligible to be an active member of [<sup>F404</sup>this Section of] the Scheme in any further employment after the first anniversary of that person's first day of such employment following the date of the Department's determination under regulation 183.]

#### Textual Amendments

**F403** Reg. 154(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 39**, reg. 1(2)

**F404** Words in reg. 154(1)-(7) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

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**F405** Reg. 154(6)(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **51**

## Concurrent employments

**155.** A practitioner may participate in [<sup>F406</sup>this Section of] the Scheme in respect of employment as a practitioner even if he also participates in Part 2 in respect of concurrent whole-time or part-time employment as an officer within the meaning of that Part.

### Textual Amendments

**F406** Words in reg. 155 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

## Joining and leaving the Scheme

### Joining [<sup>F407</sup>this Section of] the Scheme

**156.—(1)** A person entering employment with an employing authority in which the person is eligible to be an active member of [<sup>F407</sup>this Section of] the Scheme becomes such a member, unless regulation 157(4) or regulation 159 applies.

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

(3) A person who whilst an active member in any employment has exercised the option to opt out of [<sup>F407</sup>this Section of] the Scheme under regulation 157(1) and is eligible to be an active member—

(a) in that employment, or

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

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

(a) from the beginning of the first pay period to begin after the notice is received by the employing authority, or

(b) if the notice specifies a date that is the first day of a later pay period, from that date.

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

(6) Paragraph (1) is subject to regulation 157(5).

### Textual Amendments

**F407** Words in reg. 156 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature

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Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### Opting out of <sup>F408</sup>this Section of] the Scheme

**157.—**(1) A person who is an active member of <sup>F408</sup>this Section of] the Scheme in any employment may opt at any time to cease to be such a member by giving notice in writing to the person's employing authority.

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

(3) The notice takes effect—

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

(4) A person within regulation 156(1) in respect of an employment (automatic membership on entering employment) who gives notice in writing under paragraph (1) before the end of the person's first pay period in the employment is treated as not having become an active member under that regulation.

(5) Regulation 156(1) does not apply to a person entering an employment with an employing authority (“the later employment”) if—

- (a) the person has previously given notice under paragraph (1) in respect of an employment with the same authority that has ceased (“the earlier employment”), and
- (b) either—
  - (i) the period beginning with the day following that on which the earlier employment ceased and ending with the day before the later employment begins, or
  - (ii) the period beginning with the day following that on which a relevant intermediate employment ceased and ending with the day before the later employment begins, is less than 12 months.

(6) An employment is a relevant intermediate employment for the purposes of paragraph (5) if—

- (a) regulation 156(1) did not apply to the person on entering it because of paragraph (5), and
- (b) the person did not opt to become a member of <sup>F408</sup>this Section of] the Scheme in that employment under regulation 156(3).

(7) A practitioner who opts not to contribute to <sup>F408</sup>this Section of] the Scheme <sup>F409</sup>in respect of one or more employments as a practitioner under this Part must do so] in respect of all his employments as a practitioner <sup>F410</sup>but] may, nevertheless, participate in <sup>F408</sup>this Section of] the scheme in respect of concurrent employment as an officer under Part 2.

#### Textual Amendments

**F408** Words in [reg. 157](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\), reg. 1\(2\), Sch. 2 Pt. 1](#)

**F409** Words in [reg. 157\(7\)](#) inserted (with effect in accordance with reg. 1(5) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\)](#)

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and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **60(2)** (with reg. 89)

**F410** Word in reg. 157(7) inserted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **60(3)** (with reg. 89)

### Restriction on further participation in <sup>F411</sup>this Section of] the Scheme

**158.**—(1) A person who ceases to meet conditions A, B and C in regulation 153 in an employment or is prevented by regulation 154 from continuing to be an active member in an employment must cease to be an active member of <sup>F411</sup>this Section of] the Scheme in that employment.

(2) Accordingly—

- (a) a person within paragraph (1) may not make any further contributions to <sup>F411</sup>this Section of] the Scheme under Chapter 3 (contributions); and
- (b) any further service of the person is not pensionable service for the purposes of <sup>F411</sup>this Section of] the Scheme.

#### Textual Amendments

**F411** Words in reg. 158 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### Membership: locum practitioners

**159.**—(1) Regulation 156 does not apply to a locum practitioner.

(2) A locum practitioner may apply to join <sup>F412</sup>this Section of] the Scheme by sending an application to the employing authority and submitting such evidence relating to his service as a locum practitioner and the contributions payable in respect of it as are required by that employing authority.

(3) On receiving such an application, such evidence and such contributions, the employing authority must submit the application to the Department.

(4) No application may be made under paragraph (2) in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application.

#### Textual Amendments

**F412** Words in reg. 159(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

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## CHAPTER 3 CONTRIBUTIONS

### *Basic contributions by members*

#### **Contributions by members**

**160.**—(1) Each active member must make contributions to [<sup>F413</sup>this Section of] the Scheme [<sup>F414</sup>(“member contributions”)] in respect of the member’s pensionable earnings in accordance with regulation 161.

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

(3) A member who is absent from service in circumstances within regulation 140(1) to [<sup>F415</sup>(3A)] may make contributions to [<sup>F413</sup>this Section of] the Scheme in respect of the member’s pensionable earnings in accordance with those provisions and regulation 161.

#### **Textual Amendments**

**F413** Words in reg. 160 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

**F414** Words in reg. 160(1) inserted (20.1.2011) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/420\)](#), regs. 1(2), **16**

**F415** Word in reg. 160(3) substituted (14.3.2012) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), regs. 1(2), **23**

#### **[<sup>F416</sup>Members' contribution rate**

**161.**—[<sup>F417</sup>(1) Contributions under regulation 160(1) must be paid at the member’s contribution rate for the scheme year in question.

(2) A member’s contribution rate is the percentage specified in column 2 of the relevant table in paragraph (17) in respect of the corresponding pensionable earnings band specified in column 1 of that table into which the member’s pensionable earnings falls.

(3) The pensionable earnings bands and contribution percentage rates shall be determined in accordance with the relevant table in respect of each scheme year.]

(5) If, in respect of a scheme year, a practitioner (other than a dentist performer) has—

- (a) certified their pensionable earnings in accordance with regulation 260 and forwarded a record of those earnings to the host Board; or
- (b) was not required to certify their earnings in accordance with that regulation but the host Board has the figure that represents the practitioner’s pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of [<sup>F418</sup>the relevant table in paragraph (17)] in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the certified or final pensionable earnings from all practitioner sources, and
- (ii) any additional pensionable earnings the practitioner (other than a dentist performer) is treated as having received during a break in service in accordance with regulation 144.

(6) If paragraph (5) does not apply to a practitioner (other than a dentist performer) in respect of a scheme year, contributions are payable for that scheme year at the rate in column 2 of [<sup>F418</sup>the relevant table in paragraph (17)] [<sup>F419</sup>on the basis of whichever of the following the host Board considers the most appropriate in the circumstances] —

- (a) [<sup>F420</sup>the amount of the practitioner's (other than a dentist performer) earnings that] has been agreed between the host Board on the one hand and the practitioner on the other hand; or
- (b) [<sup>F420</sup>the amount of the practitioner's (other than a dentist performer) earnings that] corresponds to the practitioner's most recent certified or final pensionable earnings referred to in paragraph (5); or
- (c) [<sup>F420</sup>the amount of the practitioner's (other than a dentist performer) earnings that] corresponds to the host Board's estimate of the practitioner's pensionable earnings from all practitioner sources for that year.

This is subject to paragraph (7).

(7) If paragraph (6) applies to a practitioner (other than a dentist performer) in respect of a scheme year and paragraph (5)(a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner (other than a dentist performer) shall pay contributions at the rate determined in accordance with paragraph (5).

- (8) If, for any scheme year, a dentist performer has—
  - (a) certified their pensionable earnings in accordance with regulation 260 and forwarded a record of those earnings to the host Board; or
  - (b) was not required to certify their earnings in accordance with that regulation but the host Board has the figure that represents the dentist performer's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of [<sup>F421</sup>the relevant table in paragraph (17)] in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (i) certified or final pensionable earnings from all dentist performer sources, up-rated according to the formula—

$$(PE/NDPS) \times 365$$

where—

PE is the certified or final amount of dentist performer's pensionable earnings from all dentist performer sources for that year;

NDPS is the number of days of dentist performer service from the date the dentist performer service commenced in the scheme year to the end of the scheme year, and

- (ii) any additional pensionable earnings the dentist performer is treated as having received during a break in service in accordance with regulation 144.

(9) If paragraph (8) does not apply to a dentist performer in respect of a scheme year, that dentist performer shall pay contributions at the rate in column 2 of [<sup>F421</sup>the relevant table in

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paragraph (17)]<sup>F422</sup> on the basis of whichever of the following the host Board considers the most appropriate in the circumstances] —

- (a) [<sup>F423</sup>the amount of the dentist performer’s earnings that] has been agreed between the host Board on the one hand and the dentist performer on the other hand; or
- (b) [<sup>F423</sup>the amount of the dentist performer’s earnings that] corresponds to the dentist performer’s most recent certified or final superannuable earnings referred to in paragraph (8); or
- (c) [<sup>F423</sup>the amount of the dentist performer’s earnings that] corresponds to the host Board’s estimate of the dentist performer’s pensionable earnings from all dentist performer sources for that year up-rated according to the formula referred to in paragraph (8) .

This is subject to paragraph (10).

(10) If paragraph (9) applies to a dentist performer in respect of a scheme year and paragraph (8) (a) or (b) is subsequently satisfied in respect of that scheme year, that dentist performer shall pay contributions at the rate determined in accordance with paragraph (8).

(11) A host Board may adjust a practitioner’s contribution rate for any scheme year determined in accordance with paragraph (6) or (9)—

- (a) by agreement between the host Board on the one hand and the practitioner on the other hand; or
- (b) without such agreement, if the host Board is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.

(12) If a member is in practitioner service and concurrently in HSC employment in respect of which the member is liable to pay contributions in accordance with regulation 27, contributions payable in respect of the member’s practitioner service shall be determined under this Part and contributions payable in respect of the member’s HSC employment shall be determined under Part 2.

(13) Where a practitioner (other than a dentist performer) is also in service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) and the practitioner service as a dentist performer will each be treated separately under this regulation.

(14) In determining the contributions payable in accordance with paragraph (2), a host Board must take account of pensionable earnings as a practitioner or, as the case may be, a dentist performer, from all practitioner or, as the case may be, dentist performer sources, including any such pensionable earnings determined by another host Board.

(15) An employing authority that is not a host Board shall, in respect of any pensionable earnings it pays to a practitioner, take advice from the relevant host Board in determining the contributions payable in accordance with paragraph (2).

(16) If, apart from this paragraph, the earnings for a scheme year in respect of a member’s practitioner service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.]

<sup>F424</sup>(17) For the purposes of this regulation, the “relevant table” means—

- (a) in respect of the 2010-2011 and the 2011-2012 scheme years, Table 1;
- (b) in respect of the 2012-2013 scheme year, Table 2.

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**Table 1****Scheme Years 2010-2011 and 2011-2012**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £69,931	6.5%
£69,932 to £110,273	7.5%
£110,274 to any higher amount	8.5%

**Table 2****Scheme Year 2012-2013**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5%
£21,176 to £26,557	6.5%
£26,558 to £48,982	8%
£48,983 to £69,931	8.9%
£69,932 to £110,273	9.9%
£110,274 to any higher amount	10.9%]

**Textual Amendments**

- F416** Reg. 161 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **52**
- F417** Reg. 161(1)-(3) substituted for reg. (1)-(4) (20.1.2011) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/420), regs. 1(2), **17(2)**
- F418** Words in reg. 161(5)(6) substituted (20.1.2011) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/420), regs. 1(2), **17(3)**
- F419** Words in reg. 161(6) substituted (14.3.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(2), **24(2)(a)**
- F420** Words in reg. 161(6)(a)(b)(c) inserted (14.3.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(2), **24(2)(b)**



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- F421** Words in reg. 161(8)(9) substituted (20.1.2011) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/420), regs. 1(2), **17(3)**
- F422** Words in reg. 161(9) substituted (14.3.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(2), **24(3)(a)**
- F423** Words in reg. 161(9)(a)(b)(c) inserted (14.3.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(2), **24(3)(b)**
- F424** Reg. 161(17) substituted (1.4.2012) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/78), regs. 1(2), **18**

### Contributions by employing authorities: general

**162.**—<sup>F425</sup>(1) Each employing authority must contribute to the scheme, in respect of the pensionable earnings of each person who is an active member of the scheme in an employment with the authority, at the rate specified in paragraph (5) (“the employer’s standard rate”).]

<sup>F426</sup>(2) In specifying such a rate, the Department must—

- (a) obtain the consent of the Department of Finance and Personnel; and
- (b) take account of the advice of [<sup>F427</sup>this Section of] the Scheme actuary and the cost of providing for any increase in pensions under the Scheme as a result of orders made under the provisions of the Pensions (Increase) Act (Northern Ireland) 1971 and Article 69 of the Social Security Pensions (Northern Ireland) Order 1975.]

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

(4) If for any period a person holds more than one employment with an employing authority in respect of which the person is an active member of [<sup>F427</sup>this Section of] the Scheme, this regulation applies in respect of each of those employments as if it were the only employment held.

<sup>F428</sup>(5) The employer’s standard rate is 13.3%.]

### Textual Amendments

- F425** Reg. 162(1) substituted (20.1.2011) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/420), regs. 1(2), **18(2)**
- F426** Reg. 162(2) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **62** (with reg. 89)
- F427** Words in reg. 162 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F428** Reg. 162(5) substituted (20.1.2011) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/420), regs. 1(2), **18(3)**

## Guarantees, indemnities and bonds

163.—(1) This regulation applies if—

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

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

- (a) these Regulations, or
- (b) the Health and Personal Social Services (Superannuation) (Additional Voluntary Contributions) Regulations (Northern Ireland) 1999 <sup>M67</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 Department approves for the purpose.

### Marginal Citations

M67 S.R. 1999 No. 294

## Payment of Contributions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a principal dental practitioner, a principal medical practitioner, an assistant dental practitioner, an assistant medical practitioner or locum practitioner has failed to pay contributions; or
- (b) an employing authority has failed to deduct such contributions,

in accordance with this paragraph, the Department may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member entitled to them if—

- (i) the member agrees to such a deduction; and

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- (ii) the deduction is to the member's advantage.
- (20) For the purposes of this regulation—
  - (a) “C1 contributions” means contributions payable under regulation 160 by a practitioner under [F429this Section of] the Scheme;
  - (b) “C3 contributions” means contributions payable under regulation 162 by an employing authority in respect of a practitioner.

#### Textual Amendments

**F429** Words in reg. 164(20)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### *Additional contributions to purchase additional pensions*

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

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

- (a) to increase by a specified amount the benefits payable to the member under Chapter 4 (members' retirement benefits) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three or six months under Chapter 5 (death benefits)), or
- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 5 (death benefits) in respect of the member.

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

(3) If a member exercises an option under paragraph (1), any regular additional contributions must be deducted from the member's earnings and paid to the Department in the same manner as is specified in respect of C1 contributions (within the meaning of regulation 164) in relation to that member.

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

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

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

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

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

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

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

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(b) may be amended during a scheme year,

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

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

- (a) contributions made under regulation 167 (member's option to pay additional lump sum contributions to purchase additional pension), or
- (b) contributions made under regulation 168 (payment of additional lump sum contributions by employing authority),

may not exceed £5000 or such other amount as the Department may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 34 to 43).

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

- (a) is specified in the option,
- (b) begins with the pay period in respect of which the first contribution is made under the option,
- (c) is not less than 1 year nor more than 20 years, and
- (d) does not end later than the member's 65th birthday.

[<sup>F430</sup>(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.]

#### Textual Amendments

**F430** Reg. 165(9) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **64**

#### Effect of member being absent or leaving and rejoining [<sup>F431</sup>this Section of] the Scheme during the contribution option period

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

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

(2) If paragraph (1) applies—

- (a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation 160, and
- (b) if the member does so cease, the member may continue to make contributions in accordance with the option if the member resumes making contributions under

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regulation 160 before the end of the period of 12 months beginning with the day on which the member first ceased to pay those contributions.

- (3) This paragraph applies if—
- (a) a member exercises the option under regulation 165,
  - (b) the member ceases to be an active member during the contribution option period, and
  - (c) the member becomes an active member again before the end of the period of 12 months beginning with the day on which the member ceased to be an active member.

(4) If paragraph (3) applies, the member may continue to make contributions in accordance with the option after becoming an active member again unless a repayment of contributions has been made to the member under regulation 175.

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

#### Textual Amendments

**F431** Words in [reg. 166](#) heading inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\)](#), and [Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

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

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

- (a) to increase by a specified amount the benefits payable to the member under Chapter 4 (members' retirement benefits) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three or six months under Chapter 5 (death benefits)), or
- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 5 (death benefits) in respect of the member.

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

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

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

- (a) £250, or
- (b) such other amount as the Department may for the time being determine.

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

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

- (a) the additional contribution is payable by the member to the employing authority—
  - (i) by deduction from the member's earnings or otherwise, and
  - (ii) before the end of the period of 1 month beginning with the day on which the member is notified by the Department that the option is accepted, and

- (b) the employing authority must pay it to the Department not later than the 19th day of the month following the month in which the earnings were paid or, as the case may be, the employing authority received payment of the contribution.
- (6) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—
  - (a) contributions made under regulation 165 (member's option to pay additional periodical contributions to purchase additional pension), or
  - (b) contributions made under regulation 168 (payment of additional lump sum contributions by employing authority),

may not exceed £5000 or such other amount as the Department may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 34 to 43).

[<sup>F432</sup>(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.]

#### Textual Amendments

**F432** Reg. 167(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **65**

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

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

- (a) to increase by a specified amount the benefits payable to the member under Chapter 4 (members' retirement benefits) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three or six months under Chapter 5 (death benefits)), or
- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 5 (death benefits) in respect of the member.

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

- (a) not less than the minimum amount (as defined in regulation 167(3)), and
- (b) in the case of an amount exceeding the minimum amount, a multiple of the minimum amount (as so defined).

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

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

- (a) contributions made under regulation 165 (member's option to pay additional periodical contributions to purchase additional pension), or
- (b) contributions made under regulation 167 (member's option to pay lump sum contribution to purchase additional pension),



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may not exceed £5000 or such other amount as the Department may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 34 to 43).

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

[<sup>F433</sup>(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.]

#### Textual Amendments

**F433** Reg. 168(6) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **66**

#### Exercise of options under regulations 165, 167 and 168

**169.**—(1) A member exercising an option under regulation 165 or 167 must do so by giving notice in writing to the employing authority, giving such information as may be required and must, at the same time, provide the Department with a copy of that notice.

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

(3) An option under regulation 165, 167 or 168 may not be exercised during a period whilst the member is absent from work for any reason.

(4) For the purposes of this Part—

- (a) a member is treated as exercising an option under regulation 165 or 167 on the date on which the employing authority receives the member's notice under paragraph (1), and
- (b) an employing authority is treated as exercising an option under regulation 168 on the date on which the Department receives the authority's notice under paragraph (2).

(5) The Department may refuse to accept an option exercised under regulation 165, 167 or 168 and must do so if not satisfied that—

- (a) the member is in good health, and
- (b) in the case of an option exercised under regulation 165, there is no reason why the member's health should prevent the member from paying the contributions for the whole contribution period.

(6) If the Department refuses to accept such an option—

- (a) the Department must give notice in writing of that fact—
  - (i) in the case of an option exercised under regulation 165 or 167, to the member, and
  - (ii) in the case of an option exercised under regulation 168, to the employing authority and the member, and
- (b) this Part applies as if the option had not been exercised.

(7) These Regulations also apply as if an option under regulation 167 or 168 had not been exercised if—

- (a) in the case of an option under regulation 167, the payment is not received by the employing authority—

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- (i) before the end of the period of 1 month beginning with the day on which the Department notifies the member of the acceptance of the option, or
  - (ii) if it is earlier, on or before the member's 65th birthday, and
- (b) in the case of an option under regulation 169, the payment is not received by the Department—
- (i) before the end of the period of 1 month beginning with the day on which the authority gave the Department notice under paragraph (2), or
  - (ii) if it is earlier, on or before the member's 65th birthday.

### **Cancellation of options under regulation 167**

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

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

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

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

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

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

- (a) an option is exercised by a member under regulation 165 and all the contributions to be made under the option are made,
- (b) an option is exercised by a member under regulation 167 or by a member's employing authority under regulation 168 and the lump sum payment is made.

(2) Subject to paragraph (9), the member's pension is increased by the full amount of the increase to be made in accordance with the terms of the option, after the final adjustment in that amount in accordance with regulation 174 (revaluation of increases bought under options).

(3) Paragraph (2) is without prejudice to any increase or reduction falling to be made in the total amount of the member's pension under Chapter 4 [<sup>F434</sup>or Chapter 10 of this Part] as a result of the member becoming entitled to payment of the pension before or after reaching the age of 65 (see regulations 178 to 180 [<sup>F434</sup>and 260Q] ).

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

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

- (a) in the case of a pension under regulation 194 the amount of which is determined under regulation 196 (active members) or regulation 198 (deferred members), 37.5% of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3)),

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- (b) in the case of a pension under regulation 194 the amount of which is determined under regulation 197 (pensioner members), 37.5% of the amount of the increase in the member's pension under paragraph (2) as a result of the option,
  - (c) in the case of a pension under regulation 201 the amount of which is determined under regulation 203 (active members) or regulation 205 (deferred members), the appropriate fraction (within the meaning of regulation 203 or, as the case may be, regulation 205) of 75% of the amount of the increase mentioned in paragraph (2) that would have applied in the member's case if the member had become entitled to the increase on the date of death (disregarding paragraph (3)), and
  - (d) in the case of a pension under regulation 201 the amount of which is determined under regulation 204 (pensioner members), the appropriate fraction (within the meaning of that regulation) of 75% of the amount of the increase in the member's pension as a result of the option.
- (6) Except as provided in regulation 180 (partial retirement), no separate claim is required as respects any additional pension payable by virtue of this regulation.
- (7) This regulation is subject to regulation 172.
- (8) For the effect of the options under regulation 165 where this regulation does not apply, see regulation 173(effect of part payment of periodical contributions).
- (9) Paragraph (10) applies only to an option under regulation 165(1)(a), 167(1)(a) or 168(1)(a), where a pension is to be paid for either three or six months at the same rate as the member's pension was being paid at the date of that member's death.
- (10) Any increase to the member's pension shall be included only in a benefit payable to a surviving partner or a dependent child in respect of the member under these Regulations whilst it is being paid at the rate and for the duration of one of the periods referred to in paragraph (9).
- [<sup>F435</sup>(11) In the case of a 2008 Section Optant, this regulation is subject to regulation 260D.]

#### Textual Amendments

- F434** Words in [reg. 171\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **67(2)**
- F435** [Reg. 171\(11\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **67(3)**

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

**172.**—(1) If a member in respect of whom an option under regulation 165, 167 or 168 has been exercised dies before the end of the period of 12 months beginning with the date on which the option was exercised—

- (a) an amount equal to the contributions paid under the option must be paid—
  - (i) in the case of an option under regulation 165 or 167, to the member's personal representatives, and
  - (ii) in the case of an option under regulation 168, to the employing authority which made the contribution, and

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

(2) If a member in respect of whom an option under regulation 165 has been exercised dies after the end of the period of 12 months beginning with the date on which the option was exercised and before the end of the contribution option period, regulation 171(4) applies as if all contributions due after the date of death had been made.

(3) If a member in respect of whom an option under regulation 165, 167 or 168 has been exercised becomes entitled to a pension under regulation 182 (early retirement on ill-health (active members)) as a result of a claim made before the end of the period of 12 months beginning with the date on which the option was exercised—

(a) regulation 171(2) and (4) does not apply, and

(b) an amount equal to the contributions paid under the option must be paid—

(i) in the case of an option under regulation 165 or 167, to the member, and

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

(4) If a member in respect of whom an option under regulation 165 has been exercised becomes entitled to a pension under regulation 182 before the end of the contribution option period as a result of a claim made after the end of the period of 12 months beginning with the date on which the option was exercised, regulation 171(2) and (4) applies as if all contributions under the option had been made.

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

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

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

(6) The amount of the reduction is such amount as the Department determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the increase before the member reaches 65.

(7) This regulation is subject to regulation 173.

### **Effect of part payment of periodical contributions**

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

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

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

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

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

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

- (5) In making a determination under paragraph (4), the Scheme actuary must have regard to—
- (a) the proportion that the total contributions paid bears to the full amount of contributions due under an option under regulation 165 for the whole contribution option period, and
  - (b) the preservation requirements.

[<sup>F436</sup>(6) In the case of 2008 Section Optant, this regulation is subject to regulation 260D.]

#### Textual Amendments

**F436** Reg. 173(6) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **68**

#### [<sup>F437</sup> **Revaluation of increases bought under options: members' pensions**

**174.**—(1) Where an option under regulation 165, 167 or 168 has been exercised, the final amount of the increase in a member's pension immediately before the beginning date for that pension shall be determined in accordance with this regulation.

(2) Where the increase in pension is in respect of an option that was exercised less than 2 months before the increase becomes payable, the final amount is calculated in accordance with paragraph (4).

(3) Where the increase in pension is in respect of an option that was exercised 2 or more months before the increase in pension becomes payable, the final amount is calculated in accordance with paragraph (5).

- (4) The calculation referred to in paragraph (2) is as follows—

Step 1 – Calculate the basic amount of the increase in accordance with regulations 171 to 173, to find the Step 1 amount.

Step 2 – Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act (Northern Ireland) 1971 on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.

Step 3 – Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.

Step 4 – Divide the Step 1 amount by the Step 3 factor, to find the final amount referred to in paragraph (1).

- (5) The calculation referred to in paragraph (3) is as follows—

Step 1 - Calculate the basic amount of the increase in accordance with regulations 171 to 173, to find the Step 1 amount.

Step 2 – Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.

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

Step 4 – Take the greater of the Step 1 amount and Step 3 amount, to find the Step 4 amount.

Step 5 – Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act (Northern Ireland) 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.

Step 6 – Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.

Step 7 – Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).

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

#### Textual Amendments

**F437** Reg. 174 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), Pt. 3 reg. 40, reg. 1(2)

### *Repayment of contributions*

#### Repayment of contributions

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

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

(2) This paragraph applies if—

- (a) a person who is not a pensioner member ceases to be an active member and does not continue to be, or become, an active member for the purposes of Part 2 within 12 months of ceasing practitioner service,
- (b) the person does not fall within sub-paragraph (a), (b), (c) or (d) of regulation 176(2) (former members entitled to a pension),
- (c) paragraph (1)(b) does not apply, and
- (d) the person claims repayment of contributions under this regulation by applying in writing to the Department.

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

- (a) such part of any contributions equivalent premium paid in respect of the person as is permitted by or under section 57 of the 1993 Act, and
- (b) an amount equal to the income tax payable under section 205 of the Finance Act 2004 (short service refund lump sum charge) as a result of the repayment.

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

(5) If a repayment is made under this regulation, the member's rights under [F438 this Section of] the Scheme are extinguished unless the person or the person's spouse or civil partner is entitled to a guaranteed minimum pension under [F438 this Section of] the Scheme and a contributions equivalent payment has not been paid.

(6) A person—

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

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

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

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

(9) So far as the contributions were paid under another scheme and were included in a transfer payment to [<sup>F439</sup>this Section of] the Scheme—

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

#### Textual Amendments

- F438** Words in [reg. 175\(5\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**
- F439** Words in [reg. 175\(9\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

## CHAPTER 4

### MEMBERS' RETIREMENT BENEFITS

#### *Entitlement to pensions*

#### Normal retirement pensions

**176.**—(1) The general rule is, subject to paragraph (2) and the following provisions of this Part, that a member is entitled to a pension payable for life in respect of any period of pensionable service (“the relevant service”) if the member—

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

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

- (a) the member is entitled to count at least 2 years of qualifying service in respect of the relevant service, or



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- (b) a transfer value payment has been accepted by the Scheme during the relevant service under Chapter 6 (transfers), otherwise than from an occupational pension scheme,
  - (c) the member is entitled to a pension under this regulation in respect of any previous period of pensionable service, or
  - (d) the member has reached the age of 65.
- (3) A pension to which a member is entitled under this regulation becomes payable immediately the member becomes entitled to it.
- (4) The—
- (a) amount of the annual pension payable to a practitioner member under this regulation (disregarding any additional pension) will be equal to 1.87% of the member's uprated earnings, and
  - (b) the member's uprated earnings are to be calculated by uprating the member's pensionable earnings by the amount of the annual increase due under the provisions of the Pensions (Increase) Act (Northern Ireland) 1971 and Article 69 of the Social Security Pensions (Northern Ireland) Order 1975, plus 1.5% annually.
- (5) A claim referred to in paragraph (1)(b)(i) and made in accordance with regulation 249 takes effect from the date the claim is received by the Department.
- (6) This regulation does not apply to pensions derived from pension credit rights.
- [<sup>F440</sup>(7) In the case of 2008 Section Optant, this regulation is subject to regulation 260K.]

#### Textual Amendments

**F440** Reg. 176(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **69**

#### Pension credit members

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

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

[<sup>F441</sup>This is subject to paragraphs (5) and (8).]

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

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

[<sup>F442</sup>(5) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—

- (a) reached the age of 55; and



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- (b) claimed the payment of the pension.
- (6) The amount of the annual pension under paragraph (5)—
  - (a) is first calculated as mentioned in paragraph (3); and
  - (b) then that amount is reduced by such amount as the Department determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.
- (7) A claim under paragraph (5) must be made by notice in writing in such form as the Department requires and takes effect from the date specified in the claim as the date on which the pension is to become payable.
- (8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Department, the pension credit member—
  - (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004;
  - (b) had previously been engaged in regular employment but is now permanently incapable of engaging in such employment due to mental or physical infirmity; and
  - (c) has claimed the pension.
- (9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3).
- (10) For the purpose of paragraph (8), the Department may require whatever medical evidence that it considers necessary.]

#### Textual Amendments

**F441** Words in [reg. 177\(2\)](#) added (with effect in accordance with [reg. 1\(3\)\(g\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **53(2)**

**F442** [Reg. 177\(5\)-\(10\)](#) added (with effect in accordance with [reg. 1\(3\)\(g\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **53(3)**

#### Late payment of pension with actuarial increase

**178.—(1)** This regulation applies if a member becomes entitled to immediate payment of pension under regulation 176 after reaching the age of 65.

(2) So much of the amount of the pension to which the member would otherwise be entitled under that regulation (before any commutation under regulation 185) as is attributable—

- (a) to the member's pensionable service before that age, or
- (b) to any contributions paid under regulations 165, 167 or 168 before that age,

is increased.

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

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

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[<sup>F443</sup>(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 260Q.]

#### Textual Amendments

**F443** Reg. 178(5) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **70**

### Early payment of pensions with actuarial reduction

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

- (a) has reached the age of 55,
- (b) meets the condition in regulation 176(2)(a) or (b),
- (c) has ceased to be employed in HSC employment, and
- (d) has claimed payment of the pension.

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

- (a) is first calculated as mentioned in regulation 176(4) (and, if additional pension is payable, in accordance with regulation 171(2) or 173(2)), and
- (b) then that amount is reduced by such amount as the Department determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

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

- (a) in the case of a deferred member, from the date specified in the claim as the date on which the pension is to become payable,
- (b) in the case of an active member [<sup>F444</sup>or a non-contributing member] , from the day immediately following the day on which the member ceased to be employed in HSC employment.

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

[<sup>F445</sup>(5) In the case of 2008 Section Optant, this regulation is subject to regulation 260K.]

#### Textual Amendments

**F444** Words in [reg. 179\(3\)\(b\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **54**

**F445** Reg. 179(5) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **71**

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

**180.**—(1) An active member [<sup>F446</sup>or a non-contributing member] may exercise an option under this regulation if—

- (a) the member has reached the age of 55 and continues to be employed in the employment in which the member is an active member [<sup>F446</sup>or a non-contributing member], or where the member has more than one such employment, in at least one of those employments,
- (b) the member would be entitled to a pension for life, by virtue of regulation 176(1)(b)(i) and not regulation 176(1)(b)(ii), if the member had—
  - (i) reached the age of 65,
  - (ii) ceased to be so employed, and
  - (iii) claimed payment of the pension;
- (c) the terms on which the member engages in the employment or employments referred to in sub-paragraph (a) change, and
- (d) as a result of that change the member's engagement in such employment reduces to 90% or less of its pre-change level.

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

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

(3) The option must specify—

- (a) the percentage of the member's pension (excluding any additional pension) in respect of which the member claims immediate payment (“the specified percentage”), and
- (b) whether the member claims immediate payment of additional pension (if any).

(4) A member who duly exercises the option under this regulation is entitled—

- (a) in the case of a member who has reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 176 if the member had ceased to be employed in all his employments on the option day (disregarding any additional pension, but subject to any increase under regulation 178),
- (b) in the case of a member who has not reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 179 if the member had ceased to be employed in all his employments on the option day (disregarding any additional pension), and
- (c) if the option specifies that the member claims immediate payment of additional pension, the additional pension, subject—
  - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 178 if the member had ceased to be employed on the option day, and
  - (ii) in a case within sub-paragraph (b), to a reduction of the same amount as would have been made in that pension under regulation 179 if the member had so ceased.

(5) The specified percentage must be such that—

- (a) the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation 185 and disregarding any additional pension)—

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- (i) is not less than 20 per cent of the pension that would have been payable if the member had ceased to be employed in all his employments at the end of the option day (disregarding any additional pension), and
    - (ii) taken together with any such increase to which the member becomes entitled as a result of the option (before any such commutation), is not less than 0.05% of the member's lifetime allowance on the option day,
  - (b) the percentage of the pension (other than additional pension) in respect of which the member does not require immediate payment is not less than 20 per cent of the amount of the pension that would have been payable if the member had ceased to be employed in all his employments at the end of the option day (disregarding any additional pension).
- (6) The option under this regulation may only be exercised on no more than two occasions, and the Department shall take advice from the Scheme actuary regarding—
  - (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option),
  - (b) any benefits to be paid after the exercise of any second option, and
  - (c) the final payment.
- (7) For the purposes of—
  - (a) paragraph (1) and regulation 181, “pre-change level” means the level of the member's engagement in the employment referred to in paragraph (1)(a) during the period of 12 months ending with the option day,
  - (b) in this regulation—
    - (i) “pension” means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of his employments and, in the case of practitioner services, the pensionable earnings taken into account when working out the pension will be drawn from the [<sup>F447</sup>latest certificate referred to in regulation 260, or the latest scheme year's final pensionable earnings referred to in regulation 161 and agreed with each relevant host Board] ,
    - (ii) “the option day” means the day before the reduction referred to in paragraph (1)(d) by virtue of which the option is exercisable takes effect, and
    - (iii) regulation 181, a member's “employment” means practitioner service together with any concurrent HSC employment and “terms of employment” shall be construed accordingly.
- (8) For the purposes of this Part, a member who has exercised the option under this regulation—
  - (a) is a pensioner member as respects the specified percentage of pension to which the member is immediately entitled as a result of exercising the option and the percentage of the pensionable service that represents, as respects which the member is an active member on the option day,
  - (b) if the member continues in pensionable service after the option day, is an active member [<sup>F448</sup>or a non-contributing member] as respects—
    - (i) the pensionable service after that day in which the member continues, and
    - (ii) so much of the pensionable service as respects which the member is an active member [<sup>F448</sup>or a non-contributing member] on the option day as does not fall within sub-paragraph (a) (“the unspecified service”), and
  - (c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.
- [<sup>F449</sup>(9) In the case of 2008 Section Optant, this regulation is subject to regulation 260K.]

**Status:** Point in time view as at 01/04/2012.

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### Textual Amendments

- F446** Words in reg. 180(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **55(2)**
- F447** Words in reg. 180(7)(b)(i) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **55(3)**
- F448** Words in reg. 180(8)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **55(4)**
- F449** Reg. 180(9) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **72**

### Increase in <sup>F450</sup>level of engagement] following exercise of option under regulation 180

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

- (a) during the period of 12 months beginning with the day after the option day the terms on which the member holds the employment or employments referred to in regulation 180(1)
  - (a) change again, and
  - (b) as a result the level of the member's engagement in that employment or those employments is increased to more than 90 per cent of the member's pre-change level, or
  - (c) following an increase referred to in sub-paragraph (b), the member's engagement in that employment or those employments is reduced to less than 90 per cent of the member's engagement during the period of 12 months ending with the option day.

(2) In the circumstances referred to in—

- (a) paragraph (1)(b), the amount of the member's pension mentioned in sub-paragraphs (a) and (b) of regulation 180(4) shall be abated to zero from the first pension day immediately following the day on which the level of the member's engagement increased,
- (b) paragraph (1)(c), subject to any adjustments in accordance with paragraph (3), the member shall again be entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a) and (b) of that regulation as from the first pension day immediately following the day on which the level of the member's engagement reduced.

(3) Where paragraph (2)(b) applies, before restoring the payment of a pension the Department shall have regard to the advice of the Scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with paragraph (2)(a).

(4) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters further employment or employments in which the member is an active member <sup>F451</sup>or a non-contributing member] of <sup>F452</sup>this Section of] the Scheme—

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

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- (b) the member's level of engagement in the further employment or employments is treated as an increase in the level of the member's engagement in the option employment or employments.
- (5) In this regulation “the option day” has the same meaning as in regulation 180(7) (b) (ii).
- (6) Where—
  - (a) a member's pension is abated in accordance with paragraph (2)(a) in the circumstances described in paragraph (1)(b), and
  - (b) the member's level of engagement does not reduce in the manner described in paragraph (1) (c),

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

- (i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation 185,
- (ii) take the advice of the Scheme actuary.

#### **Textual Amendments**

- F450** Words in [reg. 181 heading](#) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\), regs. 1\(2\), 63](#) (with reg. 89)
- F451** Words in [reg. 181\(4\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\), regs. 1\(2\), 56](#)
- F452** Words in [reg. 181\(4\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\), reg. 1\(2\), Sch. 2 Pt. 1](#)

#### **Early retirement on ill-health (active members [<sup>F453</sup> and non-contributing members] )**

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

(2) An active member [<sup>F454</sup> or a non-contributing member] who has not reached the age of 65 and who has ceased to be employed in HSC employment is entitled to immediate payment of a tier 1 ill-health pension that is payable for life if—

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

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

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- (a) in addition to meeting the condition in paragraph (2) (a), in the opinion of the Department the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration,
  - (b) the member's employment is terminated because of that physical or mental infirmity,
  - (c) the member has at least 2 years of qualifying service, and
  - (d) the member has claimed the pension.
- (4) The annual amount of a tier 1 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 176(4).
- (5) The annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 176(4), but on the assumption that the member's pensionable service—
- (a) is increased by the enhancement period where the member has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous;
  - [<sup>F455</sup>(b) is not increased by the enhancement period in the circumstances referred to in (a) if—
    - (i) the member's pensionable service before and after the break is treated separately under regulation 237, or
    - (ii) the member's pensionable service in respect of an earlier service credit is treated separately under regulation 260G.]
- (6) In this regulation “the enhancement period” means, subject to paragraph (7), two-thirds of the member's assumed pensionable service.
- (7) If the member's pensionable service includes both officer service and practitioner service—
- (a) the member's pensionable service shall be increased by the enhancement period and the enhancement factor shall be the proportion by which the member's pensionable service is increased by that period,
  - (b) the length of the member's officer service (under Part 2) and the member's practitioner service will each be increased by the enhancement factor, and
  - (c) the annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 176(4), but on the assumption that the member's uprated earnings are increased by the enhancement factor.
- (8) In this regulation “the member's assumed service” means the further pensionable service that the member could have counted, subject to paragraph (9), if the member had continued in service until reaching the age of 65.
- (9) To the extent that any increase under paragraph (8) would cause a member's pensionable service to exceed the limit of 45 years provided for in regulation 139(3), the amount of any excess will be reduced accordingly.
- (10) This regulation is subject to—
- (a) regulation 239 (effect of re-employment on tier 2 ill-health pensions), and
  - (b) regulation 240 (re-employed tier 1 ill-health pensioners).
- (11) A member does not qualify for a pension under this regulation if the member's HSC employment has been terminated by the member—
- (a) being dismissed from such employment (unless the Department is satisfied that the member was dismissed because of the member's infirmity); or

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

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

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

(14) The factors to be taken into account for paragraph (12) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Department considers appropriate.

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

- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
- (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
  - (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience, irrespective of whether or not such employment is actually available to the member;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (d) such type and period of training which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such training is undergone) having due regard to the member's—
  - (i) mental capacity;
  - (ii) physical capacity;



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- (iii) previous training; and
  - (iv) previous practical, professional and vocational experience; and
  - (e) any other matter which the Department considers appropriate.
- (16) The factors to be disregarded for paragraph (13) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (17) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Department considers—
- (a) that it would be reasonable for the member to refuse,
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a), or
    - (ii) engaging in regular employment of like duration under paragraph (3)(a), before the member reaches age 65, or
  - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;

[<sup>F456</sup>“permanently” means—

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

“regular employment of like duration” means such employment as the Department considers would involve a similar level of engagement to the member's current pensionable service as a practitioner.

[<sup>F457</sup>(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 260K, 260M to 260P and 260R.]

[<sup>F458</sup>(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 260Z.]

#### Textual Amendments

**F453** Words in [reg. 182 heading](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), [57\(2\)](#)

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- F454** Words in reg. 182(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **57(3)**
- F455** Reg. 182(5)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **73(2)**
- F456** Words in reg. 182(17) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **73(3)**
- F457** Reg. 182(18) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **73(4)**
- F458** Reg. 182(19) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 41**, reg. 1(2)

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

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

- (a) in the opinion of the Department a member meets the condition in regulation 182(2)(a), and
- (b) at the time the member is awarded a pension under that regulation the Department gives the member notice in writing that the member's case may be considered once within a period of three years commencing with the date of that award to determine whether the member meets the condition in regulation 182(3)(a) at the date of such a consideration.

[<sup>F459</sup>(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Department for a review of whether the member subsequently meets the condition in regulation 182(3)(a) if—

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

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

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- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 182, which shall be calculated as if paragraph (8) of that regulation included the words “from the date of the Department's determination under regulation 183” after “continued in service”.

[<sup>F460</sup>(4) In the case of a 2008 Section Optant, this regulation is subject to regulations 260O and 260P.]

#### Textual Amendments

**F459** Reg. 183(2) substituted (with effect in accordance with reg. 1(4)(g) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **74(2)**

**F460** Reg. 183(4) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **74(3)**

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

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

- (a) in the opinion of the Department the member suffers from physical or mental infirmity as a result of which the member is [<sup>F461</sup>permanently] incapable of engaging in regular employment of like duration, and
- (b) the member has claimed the pension.

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

- (a) in the opinion of the Department the member—
  - (i) does not fall within paragraph (1)(a), but
  - (ii) suffers from physical or mental [<sup>F462</sup>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 claimed the pension.

(3) The amount of the annual pension payable under this regulation (disregarding any additional pension) is calculated as specified in regulation 176(4).

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

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

- (6) The factors to be taken into account for paragraph (4) are—
  - (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) the member's—

- (i) mental capacity; and
    - (ii) physical capacity;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity, irrespective of whether such rehabilitation is undergone; and
  - (d) any other matter which the Department considers appropriate.
- (7) The factors to be taken into account for paragraph (5) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (d) such type and period of training which it would be reasonable for the member to undergo in respect of his incapacity (irrespective of whether such training is undergone) having due regard to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience;
  - (e) any other matter which the Department considers appropriate.
- (8) The factors to be disregarded for paragraph (5) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (9) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Department considers—
- (a) that it would be reasonable for the member to refuse,
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii), or
    - (ii) engaging in regular employment of like duration under paragraph (1)(a), before the member reaches age 65, or

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(c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;

“permanently” means the period until age 65; and

“regular employment of like duration” means such employment as the Department considers would involve a similar level of engagement to the member's pensionable service as a practitioner immediately before that service ceased.

[<sup>F463</sup>(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 260K.]

#### Textual Amendments

- F461** Word in reg. 184(1)(a) inserted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **65(2)** (with reg. 89)
- F462** Word in reg. 184(2)(a)(ii) substituted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **65(3)** (with reg. 89)
- F463** Reg. 184(10) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **75**

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

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

**185.**—(1) A member, [<sup>F464</sup>(other than a pension credit member whose rights under [<sup>F465</sup>this Section of] the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the Finance Act 2004 )] may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.

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

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

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

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

(6) If the member has a guaranteed minimum under section 10 of the 1993 Act in relation to the whole or part of a pension, paragraph (1) only applies to so much of the pension as exceeds that guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the Scheme actuary.

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

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

[<sup>F466</sup>This is subject to paragraphs (8) and (9).]

[<sup>F467</sup>(8) If the pension is an ill-health pension under regulation 182, the option under this regulation may only be exercised by giving notice in writing to the Department in such form as it requires—

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

(9) If the pension is a tier 2 ill-health pension under regulation 183, in substitution for a tier 1 ill-health pension under regulation 182, the option under this regulation may only be exercised—

- (a) in relation to the difference between the tier 1 ill-health pension that ceases to be payable in accordance with paragraph (3) of regulation 183 and the tier 2 ill-health pension to which the member becomes entitled under that paragraph; and
- (b) by giving notice in writing to the Department in such form as it requires—
  - (i) at the time of award of the tier 2 ill-health pension under that paragraph, or
  - (ii) before such later time as the Department specifies in writing.]

[<sup>F468</sup>(10) In the case of a 2008 Section Optant, this regulation is subject to paragraph (4) of regulation 260H and regulation 260K.]

#### Textual Amendments

- F464** Words in reg. 185(1) substituted (with effect in accordance with reg. 1(3)(h) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **59(2)**
- F465** Words in reg. 185(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F466** Words in reg. 185(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **59(3)**
- F467** Reg. 185(8)(9) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **59(4)**
- F468** Reg. 185(10) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **76**

*Status: Point in time view as at 01/04/2012.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

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

**186.**—(1) An active member [<sup>F469</sup>or a non-contributing member], a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the Department is satisfied that the conditions for the lump sum to be a serious ill-health lump sum for the purposes of the Finance Act 2004 will be met (see paragraph 4 of Schedule 29 to that Act).

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

- (a) 176 (normal retirement pensions),
- (b) 177 (pension credit members' pensions),
- (c) 182 (early payment of pensions: ill-health), or
- (d) 184 (early retirement on ill-health (deferred members)).

(3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 176 or 177, before or at the time when the pension becomes payable,
- (b) in the case of a pension payable under regulation 182 or 184, before the pension becomes payable to the member.

(4) An active member [<sup>F470</sup>or a non-contributing member] aged 65 or over who exercises the option is to be paid, as soon as is reasonably practicable and before reaching the age of 75, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 185 if at the appropriate time the member had become entitled to a pension under regulation 176, and
- (b) the total annual amount of the pension to which the member would have been entitled under regulation 176 after exercising that option, multiplied by 5.

[<sup>F471</sup>(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—

- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 185 at the appropriate time; and
- (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 177 after exercising that option, multiplied by 5.]

(6) An active member [<sup>F472</sup>or a non-contributing member] entitled to a pension under regulation 182 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 185 at the appropriate time, and
- (b) the total annual amount of the pension to which the member is entitled under regulation 182 after exercising that option, multiplied by 5.

(7) A deferred member entitled to a pension under regulation 184 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 185 at the appropriate time, and
- (b) the total annual amount of the pension to which the member is entitled under regulation 184 after exercising that option, multiplied by 5.

(8) In this regulation “the appropriate time” means—



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- (a) for the purposes of paragraphs (4) and (5) the time when the option under this regulation is exercised, and
- (b) for the purposes of paragraphs (6) and (7) the time payment of the pension under regulation 182 or, as the case may be, regulation 184 would otherwise first be due.

(9) In this regulation references to the “annual amount” of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act (Northern Ireland) 1971, calculated as at the appropriate time.

(10) The option under this regulation may only be exercised by notice in writing to the Department in such form as the Department requires.

#### Textual Amendments

- F469** Words in reg. 186(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **60(2)**
- F470** Words in reg. 186(4) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **60(3)**
- F471** Reg. 186(5) substituted (with effect in accordance with reg. 1(3)(i) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **60(4)**
- F472** Words in reg. 186(6) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **60(5)**

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

#### [<sup>F473</sup>Reduction in pension debit member’s benefits

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(1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under Article 28 of the 1999 Order (Reduction under pension sharing order following divorce or nullity of marriage).

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

#### Textual Amendments

- F473** Reg. 187 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **77**



*Status: Point in time view as at 01/04/2012.*

*Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)*

## Pension credit member's rights

<sup>F474</sup>188. ....

### Textual Amendments

**F474** Reg. 188 omitted (with effect in accordance with reg. 1(3)(j) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **61**

### Allocation

#### Election to allocate pension

**189.**—(1) A member may elect to allocate a part of the annual amount of the member's pension under [<sup>F475</sup>this Section of] the Scheme for the provision of a pension after the member's death for an individual who is the member's spouse or civil partner or another person who is the member's dependant within the meaning of paragraph 15 of Schedule 28 to the Finance Act 2004 if conditions A and B are met.

(2) Condition A is that the member has not become entitled to the payment of any pension under [<sup>F475</sup>this Section of] the Scheme other than a pension payable under regulation 180 (partial retirement: members aged at least 55).

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

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

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

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

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

- (a) the allocated annual pension exceeding the member's unallocated relevant annual pension,
- (b) the allocated pension exceeding such amount as the Department may determine for the purposes of this paragraph, after consultation with the Scheme actuary, having regard to any restrictions imposed under Part 4 of the Finance Act 2004, or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 252 (commutation of small pensions) by way of commutation of a pension of that amount if the person entitled to the pension was not entitled to any other benefits under [<sup>F476</sup>this Section of] the Scheme.

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

(8) If a member—

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

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

(9) References in this regulation to the member's relevant pension, in relation to any pension, are references to so much of the pension as would be payable if the member had exercised the option under regulation 185 (general option to exchange part of pension for lump sum) so as to obtain the maximum lump sum possible.

#### **Textual Amendments**

**F475** Words in [reg. 189\(1\)\(2\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F476** Words in [reg. 189\(6\)\(c\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### **Procedure for election under regulation 189**

**190.**—(1) An election under regulation 189 in respect of a member's pension must be made—

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

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

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

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

(5) The election may not be withdrawn, amended or revoked after it has taken effect.

(6) The election does not take effect if—

- (a) the member or the person in whose favour the election was made (“the beneficiary”) dies on or before the day on which the Department accepts it, or
- (b) the Department is not satisfied that at the time when the election is made the member is in good health.

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

#### **Effect of allocation**

**191.**—(1) If an election under regulation 189 for the allocation of a member's pension to another person (“the beneficiary”) has taken effect—

- (a) the member's pension is reduced accordingly (even if the beneficiary predeceases the member), and
- (b) if the beneficiary survives the member, on the member's death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 189.

*Status: Point in time view as at 01/04/2012.*

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(2) An allocation is disregarded for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither—

- (a) the member's spouse or civil partner on the date when the member becomes entitled to the pension or dies, nor
- (b) a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to the Finance Act 2004 when the member dies.

(3) References in this Part to pensions under this Chapter do not include pensions under this regulation except where the context otherwise requires.

(4) Any such pension is payable in addition to any pension payable to the beneficiary in respect of the member's death under Chapter 5 (death benefits).

### *Dual capacity membership*

#### **Dual capacity membership**

**192.**—(1) This paragraph applies if a member is—

- (a) a member of [<sup>F477</sup>this Section of] the Scheme of two or more of the kinds specified in paragraph (2),
- (b) a pensioner member in respect of two or more pensions, or
- (c) a deferred member in respect of two or more pensions.

(2) The kinds of member are—

- (a) an active member [<sup>F478</sup>or a non-contributing member] ,
- (b) a deferred member,
- (c) a pensioner member, and
- (d) a pension credit member.

(3) If paragraph (1) applies, the general rule is that—

- (a) benefits are payable to the member under this Chapter (or to any person to whom the member has opted to allocate pension under regulation 189) as if the member were two or more members of the kinds in question (so that two or more pensions or lump sums are payable in respect of the one member), and
- (b) the amounts payable are determined accordingly.

(4) The rule in paragraph (3) is subject to any indication to the contrary and, in particular, does not affect the interpretation of—

- (a) regulation 139(3) (45 year limit),
- (b) regulation 180(9) in a case where a member is both an active member [<sup>F479</sup>or a non-contributing member] and a pensioner member by virtue of that regulation,
- (c) regulation 238 (exception to general rule in 237 about separate treatment of pay and service),
- (d) regulation 239 (effect of re-employment on tier 2 ill-health pensions),
- (e) regulation 240 (re-employed tier 1 ill-health pensioners), or
- (f) Chapter 8 (abatement).

(5) If a person who is a pension credit member is entitled to two or more pension credits—

- (a) benefits are payable to the person under [<sup>F480</sup>this Section of] the Scheme (or to any person to whom the member has opted to allocate pension under regulation 189) as if the person

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- were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable to the one pension credit member), and
- (b) the amounts of those benefits are determined accordingly.

#### Textual Amendments

- F477** Words in reg. 192(1)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F478** Words in reg. 192(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **62**
- F479** Words in reg. 192(4)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **62**
- F480** Words in reg. 192(5)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

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

#### **Guaranteed minimum pensions etc**

**193.**—(1) If a member has a guaranteed minimum under section 10 of the 1993 Act in relation to benefits under [<sup>F481</sup>this Section of] the Scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a member and such a member's rights under [<sup>F481</sup>this Section of] the Scheme not to be met in the case of the member,
- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member, and
- (c) the following provisions are without prejudice to the generality of this paragraph.

(2) If apart from this rule—

- (a) no pension would be payable to the member under [<sup>F482</sup>this Section of] the Scheme, or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

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

(3) Subject to paragraph (4), if—

- (a) on reaching State pension age the member is still in employment (whether or not it is scheme employment), and
- (b) if it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

paragraph (2) does not apply until the member leaves employment, unless paragraph (4) applies.

*Status: Point in time view as at 01/04/2012.*

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

(5) If paragraph (3) or (4) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 11 of the 1993 Act.

(6) If—

- (a) before State pension age the member becomes entitled to the immediate payment of a pension, and
- (b) the member has a guaranteed minimum under section 10 of the 1993 Act in relation to the whole or part of the pension,

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

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out by reference to <sup>F483</sup>this Section of] the Scheme, and either—

- (a) all the person's rights to benefits under <sup>F483</sup>this Section of] the Scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 5(2B) of the 1993 Act (“the person's contracting-out rights”), have been transferred under Chapter 6 (transfers), or
- (b) the person has no rights to benefits under <sup>F483</sup>this Section of] the Scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies—

- (a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to his guaranteed minimum, if any, and
- (b) from the date on which the person reaches pension age the person is entitled to a pension in respect of his rights under section 5(2B) of the 1993 Act,

but a person falling within paragraph (7) is not to be regarded as a pensioner for the purposes of Chapter 5 (death benefits).

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

- (a) a pension that is forfeited—
  - (i) as a result of a conviction for treason, or
  - (ii) in a case where an offence within regulation 254(2)(b) is committed,
- (b) a pension that is commuted under regulation 186 (option for members in serious ill-health to exchange whole pension for lump sum), or
- (c) a pension that is commuted under regulation 252 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 <sup>M68</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 185 (general option to exchange part of pension for lump sum), and
- (iii) before the subtraction of any amount allocated under regulation 189 (election to allocate pension).

#### Textual Amendments

- F481** Words in reg. 193(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F482** Words in reg. 193(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F483** Words in reg. 193(7) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### Marginal Citations

- M68** S.R. 1996 No. 493

## CHAPTER 5

### DEATH BENEFITS

#### *Pensions for surviving adults*

#### Surviving adult dependants' pensions

**194.**—(1) If an active member, [<sup>F484</sup> a non-contributing member] a deferred member or a pensioner member dies leaving a surviving adult dependant, the surviving adult dependant is entitled to a pension that is payable for life.

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

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

#### Textual Amendments

- F484** Words in reg. 194(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **63**

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### Meaning of “surviving nominated partner”

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

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

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

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

[<sup>F485</sup>(3) In the case of a 2008 Section Optant, this regulation is subject to regulation 260L.]

[<sup>F486</sup>(4) In the case of a Waiting Period Joiner, this regulation is subject to regulation 260Y.]

#### Textual Amendments

**F485** Reg. 195(3) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **78**

**F486** Reg. 195(4) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 42**, reg. 1(2)

### Amount of pensions under regulation 194: active [<sup>F487</sup>and non-contributing] members

**196.**—[<sup>F488</sup>(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member's death (“the initial period”) the rate of the pension payable under regulation 194 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to—

- (a) in the case of a deceased active member, the rate of the member's pensionable earnings during the last complete quarter before the member's death;
- (b) in the case of a deceased non-contributing member, the monthly average of the deceased's uprated earnings on the member's last day of pensionable service.]

(2) Subject to paragraph (3), after the initial period, if the member dies with 2 or more years of qualifying service, the annual amount of the pension payable under regulation 194—

- (a) if the member has not reached the age of 65, is equal to the appropriate proportion of the tier 2 ill-health pension under regulation 182 to which the member would have been entitled if on the date of death the member had become entitled to such a pension, and
- (b) if the member has reached the age of 65, is equal to the appropriate proportion of the pension under regulation 176 (normal retirement pensions) to which the member would have been entitled if on the date of death the member had become entitled to such a pension in respect of any period of pensionable service that the member is entitled to count.

[<sup>F489</sup>Sub-paragraph (b) is subject to paragraph (7).]

(3) After the initial period, if the member dies with less than 2 years of qualifying service but after reaching the age of 65, the annual amount of the pension payable under regulation 194 is equal to the appropriate proportion of the pension to which the member would have been entitled (disregarding any additional pension) if on the date of death the member had become entitled to a pension under regulation 176 (normal retirement pensions) in respect of any period of pensionable service that the member is entitled to count.

[<sup>F490</sup>This is subject to paragraph (7).]

(4) After the initial period, if—

- (a) the member dies with less than 2 year's qualifying service and before reaching the age of 65, and
- (b) the surviving adult has a guaranteed minimum under section 13 of the 1993 Act in relation to benefits in respect of the deceased member under [<sup>F491</sup>this Section of] the Scheme,

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

(5) This paragraph applies if the Department's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act.

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

[<sup>F492</sup>(7) For the purposes of paragraphs (2)(b) and (3) any increase under—

- (a) regulation 178; or
- (b) regulation 260Q,

is ignored.]

#### Textual Amendments

**F487** Words in [reg. 196 heading](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [64\(2\)](#)

**F488** [Reg. 196\(1\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [64\(3\)](#)

**F489** Words in [reg. 196\(2\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), [79\(2\)](#)



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- F490** Words in reg. 196(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **79(3)**
- F491** Words in reg. 196(4)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F492** Reg. 196(7) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **79(4)**

### Amount of pensions under regulation 194: pensioner members

**197.**—(1) In the case of a pensioner member, for the initial period the rate of the pension payable under regulation 194(1) is equal to the rate of the member's pension in payment at the time of death if that amount is greater than the sum of—

- (a) the amount of the pension payable to the surviving adult dependant under this Chapter apart from this paragraph, and
- (b) the amount of the children's pensions otherwise payable under this Part.

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

[<sup>F493</sup>(3) For the purposes of paragraph (1) any reduction in the member's pension under—

- (a) Chapter 8 of this Part;
- (b) regulation 185; or
- (c) regulation 260K,

is ignored.

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

- (a) any reduction in the rate of member's pension under—
  - (i) regulation 179,
  - (ii) regulation 185, or
  - (iii) regulation 260K; and
- (b) any increase in the rate of the member's pension under—
  - (i) regulation 178, or
  - (ii) regulation 260Q,
 is ignored.]

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

- (a) if the member leaves one or more dependent children who are dependant on the surviving adult dependant, the period of 6 months beginning with the day after the member's death, and
- (b) otherwise the period of 3 months beginning with that day.

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

(6) If a member who has had a tier 2 ill-health retirement pension under regulation 182 replaced by a tier 1 ill-health retirement pension (by virtue of regulation 239(2))—

- (a) is in further HSC employment and dies before the end of the initial period (within the meaning of that regulation), or
- (b) is in further employment that is not HSC employment and dies within a period of one year beginning with the day on which that further employment ceased to be an excluded employment (within the meaning of that regulation),

the member's pension referred to in paragraph (1) means that member's original tier 2 ill-health pension.

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

<sup>F494</sup>(8) .....

#### Textual Amendments

**F493** Reg. 197(3)(3A) substituted for Reg. 197(3) (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **80(2)**

**F494** Reg. 197(8) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **80(3)**

#### Amount of pensions under regulation 194: deferred members

**198.**—(1) In the case of a deferred member—

- (a) who left pensionable service less than 12 months before the date of death, and
- (b) whose surviving adult dependant would have been the member's surviving adult dependant if the member had died on the member's last day of pensionable service,

the rate of the pension payable under regulation 194(1) is equal to the appropriate proportion of the tier 2 ill-health pension under regulation 182 to which the member would have been entitled if on the date the member's pensionable service ceased the member had become entitled to such a pension under regulation 182 (but disregarding any additional pension).

(2) In the case of any other deferred member, the rate of the pension payable under regulation 194(1) is equal to the appropriate proportion of the pension under regulation 176 (normal retirement pensions) in respect of any period of pensionable service to which the member would have been entitled if on the date of death the member had become entitled to such a pension.

#### Recent leavers

**199.**—(1) If—

- (a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 13 of the 1993 Act in relation to benefits in respect of the recent leaver under [<sup>F495</sup>this Section of] the Scheme, and
- (b) the member has died before reaching the age of 65,

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the surviving spouse or civil partner is entitled to a pension that is payable for life of an amount equal to that person's guaranteed minimum pension (disregarding any additional pension), unless paragraph (2) applies.

(2) This paragraph applies if the Department's liability to provide a guaranteed minimum pension in respect of the surviving adult is discharged by the payment of a contributions equivalent premium under section 51(2) of the 1993 Act.

(3) In this Part “recent leaver” means a person—

- (a) who left pensionable service less than 12 months before the date of death,
- (b) who is not a deferred member or a pensioner member because of rights resulting from that employment, and
- (c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

#### Textual Amendments

**F495** Words in [reg. 199\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Re-employed pensioners: adult survivor pensions in initial period

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

(2) Where this regulation applies, the rate of pension payable by virtue of regulations 196(1) and 197(1) during the initial period (as defined in the respective regulations) shall instead be the rate provided in paragraph (3).

(3) Subject to paragraph (4), for the relevant initial period the rate of the pension payable under regulation 194 is equal to the sum of—

- [<sup>F496</sup>(a) in the case of—
  - (i) a deceased active member, the rate of the deceased’s pensionable earnings during the last complete quarter before the member’s death, or
  - (ii) a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service; and
- [<sup>F497</sup>(b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under—
  - (i) Chapter 8 of this Part,
  - (ii) regulation 185, and
  - (iii) regulation 260K.]]

(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.

### Textual Amendments

**F496** Reg. 200(3)(a)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **66**

**F497** Reg. 200(3)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **81**

### *Pensions for dependent children*

#### Surviving children's pensions

**201.**—(1) If a member or a recent leaver dies leaving one or more dependent children, a pension is payable in respect of them.

(2) This is subject to paragraphs (7) to (9).

(3) If a dependent child ceases to be a dependent child after the date of death, the pension ceases to be payable in respect of that child.

(4) If a dependent child is born after the date of death, the same pension is payable in respect of the child as if the child had been born on the date of death.

(5) If a member or a recent leaver dies leaving two or more dependent children, they are entitled to such shares of the pension as the Department may from time to time decide.

(6) An amount payable under this regulation in respect of a dependent child is payable to the dependent child or, if the Department so decides, to another person for the dependent child's benefit.

(7) No pension is payable in respect of any dependant children who on the deceased's death are dependant on an adult who is entitled to a surviving adult's pension whilst that pension is payable at the rate mentioned in regulation 197(1) or 200(3)(b), except so much of that pension as is additional pension.

(8) If a dependent child is incapable of earning a living because of physical or mental infirmity for any period and the child is maintained out of money provided by Parliament in a hospital or other institution for a period exceeding one month, no pension is payable in respect of the child for any part of that period after the first month.

(9) If, apart from this paragraph, a pension would be payable in respect of any person as a dependent child of three or more persons who were deceased members or recent leavers—

(a) a pension is only payable in respect of two of them, and

(b) the amount payable is equal to the sum of the two highest pensions.

(10) For the rate at which the pension referred to in paragraph (1) is payable, see regulations 203 to 208 and, in any case where that pension includes additional pension, regulations 171(4) and 173(3).

#### Meaning of “dependent child”

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

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

(b) either—

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- (i) has not reached the age of 23, or
- (ii) in the opinion of the Scheme administrator was financially dependent on the deceased at the date of death because of physical or mental impairment and remains so,
- (c) was born—
  - (i) [<sup>F498</sup>before the deceased ceased to be an active member] , or
  - (ii) within one year after the deceased ceased to be an active member,
- (d) in the case of a person within sub-paragraph (c)(i), was dependent on the deceased—
  - (i) at the date of death, and
  - (ii) if the deceased died after ceasing to be an active member, when the deceased ceased to be an active member, and
- (e) in the case of a person within sub-paragraph (c)(ii)—
  - (i) was dependent on the deceased both at birth and at the deceased's death, or
  - (ii) if the person was born after the deceased's death, would have been dependent on the deceased had the deceased not died before the person's birth.
- (2) A person meets the relationship condition if the person is—
  - (a) a natural child or natural grandchild of the deceased,
  - (b) an adopted child of the deceased who was adopted whilst the deceased was an active member,
  - (c) a step-child of the deceased whose natural or adoptive parent is the deceased's surviving spouse or civil partner from a marriage entered into, or a civil partnership formed, whilst the deceased was an active member,
  - (d) in a case where the deceased left a surviving nominated partner with whom the deceased was living as mentioned in regulation 195(1)(b)(i) when the deceased ceased to be an active member, a person whose natural or adoptive parent is the deceased's surviving nominated partner,
  - (e) a brother or sister, or a child of a brother or sister, of the member or the member's spouse or civil partner or nominated partner,
  - (f) a half-brother or half-sister, or a child of a half-brother or half-sister, of the member or the member's spouse or civil partner or nominated partner,
  - (g) a person whom, in the opinion of the Scheme administrator, the deceased intended when the deceased ceased to be an active member to adopt, or
  - (h) a person who had been dependent on the deceased for 2 years or (if less) half the person's life when the deceased ceased to be an active member.

#### Textual Amendments

**F498** Words in [reg. 202\(1\)\(c\)\(i\)](#) substituted (1.4.2012) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), regs. 1(3), 26

**Amount of children's pension under regulation 201: deceased active members <sup>[F499]</sup>and deceased non-contributing members]**

**203.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 201(1) (surviving children's pensions) if at the date of death the deceased was an active member <sup>[F500]</sup>, or a non-contributing member] of <sup>[F501]</sup>this Section of] the Scheme who was not also a pensioner member.

(2) Subject to <sup>[F502]</sup>paragraphs (5) and (6)] , that amount is the appropriate fraction of the basic death pension.

<sup>[F503]</sup>(3) In this regulation “the basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 176 and—

- (a) in the case of an active member, that pension will include the greater of—
  - (i) any increase due to such enhancement period (if any) that would have applied for the purposes of regulation 182(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death, and
  - (ii) 10 years' pensionable service;
- (b) in the case of a non-contributing member, will be based on the pensionable service that the deceased was entitled to count on the date of death.]

<sup>[F504]</sup>In the case of a 2008 Section Optant, this is subject to regulation 260W <sup>[F505]</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 260ZB].]

(4) In this regulation “the appropriate fraction” means—

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 194—
  - (i) one-quarter if there is only one dependent child, and
  - (ii) one-half if there are two or more dependent children,
- (b) if there is such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 194—
  - (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children,
- (c) if there is no such parent nor spouse nor partner of such a parent—
  - (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children.

(5) If—

- (a) a surviving adult dependant's pension is payable under regulation 194, and
- (b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension payable in respect of that child for the first 3 months after the deceased's death is <sup>[F506]</sup>equal to—

- (i) in the case of a deceased active member, the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died, and
- (ii) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.]

<sup>[F507]</sup>(6) In a case within paragraph (4)(b) or (c), the rate of pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to—

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- (a) in the case of a deceased active member, the average rate of the deceased's pensionable earnings during the last complete quarter before the member died; and
- (b) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased's uprated earnings on the member's last day of pensionable service.]

#### Textual Amendments

- F499** Words in [reg. 203 heading](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [67\(2\)](#)
- F500** Words in [reg. 203\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [67\(3\)](#)
- F501** Words in [reg. 203\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)
- F502** Words in [reg. 203\(2\)](#) substituted (with effect in accordance with [reg. 1\(5\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), [66](#) (with [reg. 89](#))
- F503** [Reg. 203\(3\)](#) substituted (with effect in accordance with [reg. 1\(4\)\(g\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [67\(4\)](#)
- F504** Words in [reg. 203\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), [82](#)
- F505** Words in [reg. 203\(3\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), [Pt. 3 reg. 43](#), [reg. 1\(2\)](#)
- F506** Words in [reg. 203\(5\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [67\(5\)](#)
- F507** [Reg. 203\(6\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [67\(6\)](#)

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

**204.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 201(1) (surviving children's pensions) if at the date of death the deceased was a pensioner member of [<sup>F508</sup>this Section of] the Scheme who was not also an active member [<sup>F509</sup>or a non-contributing member] .



(2) Subject to paragraphs (5), (6) and (7) that amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension” means the greater of—

- (a) twice the appropriate proportion of the deceased's annual pension (disregarding any additional pension), and
- (b) twice the appropriate proportion of the annual pension to which the deceased would have been entitled if the deceased had been entitled to count 10 years' pensionable service (disregarding any additional pension).

[<sup>F510</sup>In the case of a 2008 Section Optant, this is subject to regulation 260W [<sup>F511</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 260ZB].]

(4) In this regulation “the appropriate fraction” means—

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 194—
  - (i) one-quarter if there is only one dependent child, and
  - (ii) one-half if there are two or more dependent children,
- (b) if there is such a parent or spouse or partner of a parent, but no surviving adult dependant's pension is payable under regulation 194—
  - (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children,
- (c) if there is no such parent or spouse or partner of a parent—
  - (i) one-third if there is only one dependent child, and
  - (ii) two-thirds if there are two or more dependent children.

(5) If—

- (a) a surviving adult dependant's pension is payable under regulation 194, and
- (b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension in respect of that child for the first 3 months after the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any additional pension).

(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any reduction made under Chapter 8 (abatment) and any additional pension).

(7) If the deceased member's pension was payable under regulation 179 (early payment of pensions with actuarial reduction), the reference in paragraph (3)(a) and (b) to the member's pension is a reference to the amount that the member's pension would have been if it had been calculated without the reduction mentioned in paragraph (2)(b) of that regulation.

[<sup>F512</sup>(8) For the purposes of paragraphs (3), (5) and (6), any reduction in the member's pension under regulation 185 and regulation 260K will be ignored.]

### Textual Amendments

**F508** Words in [reg. 204\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**



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- F509** Words in reg. 204(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **68**
- F510** Words in reg. 204(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **83(2)**
- F511** Words in reg. 204(3) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 44**, reg. 1(2)
- F512** Reg. 204(8) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **83(3)**

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

**205.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 201(1) if at the date of death the deceased was a deferred member of [<sup>F513</sup>this Section of] the Scheme who was not also an active member [<sup>F514</sup>or a non-contributing member] or a pensioner member.

- (2) That amount is the appropriate fraction of the basic death pension.
- (3) In this regulation “the basic death pension”—
- (a) if the deceased died within 12 months after ceasing to be an active member [<sup>F515</sup>or a non-contributing member] , means the amount that would be the basic death pension for the purposes of regulation 203 if the deceased had died on the day of so ceasing (disregarding any additional pension), and
- (b) otherwise, means the greater of—
- (i) twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 176 on the date of death (disregarding any additional pension), and
- (ii) twice the appropriate proportion of the pension to which the deceased would have been entitled if the deceased had become so entitled and the pension had been calculated on the assumption that the member was entitled to 10 years' pensionable service (disregarding any additional pension).

[<sup>F516</sup>In the case of a 2008 Section Optant, this is subject to regulation 260W [<sup>F517</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 260ZB.]]

- (4) In this regulation “the appropriate fraction” means—
- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult's pension is payable—
- (i) one-quarter if there is only one dependent child, and
- (ii) one-half if there are two or more dependent children,
- (b) otherwise—
- (i) one-third if there is only one dependent child, and

- (ii) two-thirds if there are two or more dependent children.

#### Textual Amendments

- F513** Words in reg. 205(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F514** Words in reg. 205(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **69**
- F515** Words in reg. 205(3)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **69**
- F516** Words in reg. 205(3) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **84**
- F517** Words in reg. 205(3) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 45**, reg. 1(2)

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

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

(2) That amount is the appropriate fraction of the basic death pension.

(3) In this regulation—

[<sup>F518</sup>(a) “the basic death pension” means twice the appropriate proportion of the pension to which the deceased would be entitled to—

- (i) if the deceased had become entitled to a pension under regulation 182(5), or  
(ii) if greater, the amount that the member’s pension would have been if it had been based on 10 years’ pensionable service (disregarding any additional pension), and]

(b) “the appropriate fraction” means—

(i) if there is a surviving parent of the dependant child or children or a surviving spouse or civil partner of a parent of the dependant child or children and a surviving adult's pension is payable—

- (aa) one-quarter if there is only one dependant child, and  
(bb) one-half if there are two or more dependant children,

(ii) otherwise—

- (aa) one-third if there is only one dependant child, and  
(bb) two-thirds if there are two or more dependant children.

*Status: Point in time view as at 01/04/2012.*

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### Textual Amendments

**F518** Reg. 206(3)(a) substituted (with effect in accordance with reg. 1(4)(h) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **70**

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

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

- (a) a member dies leaving a dependent child or children,
- (b) there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children, and
- (c) the dependent child or children are not being maintained by that surviving parent, spouse or partner.

(2) The Department may increase the amount of the pension that would otherwise be payable under this Chapter in respect of the dependant child or children.

(3) The increased amount may not exceed the amount that would have been payable under this Chapter if there had been no such surviving parent or spouse or partner of a parent.

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

**208.**—(1) This regulation applies for determining the annual amount of a pension payable under regulation 201(1) if at the date of death the deceased was an active member [<sup>F519</sup>or a non-contributing member] who was also a pensioner member of [<sup>F520</sup>this Section of] the Scheme.

(2) If there is no surviving adult dependant, the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the sum of—

[<sup>F521</sup>(a) in the case of—

- (i) a deceased active member, the rate of the deceased's pensionable earnings during the last complete quarter before the member died, or
- (ii) a deceased non-contributing member, the rate of the monthly average of the deceased's uprated earnings on the last day of the member's pensionable service, and

(b) the rate of the pension being received by the deceased (if any) at the date of death.]

(3) Subject to paragraph (5), except where a pension is payable at the rate mentioned in paragraph (2), the pension in respect of the member's later service shall be paid as the appropriate fraction of twice the appropriate proportion of the rate of pension described in—

- (a) regulation 182(5) if the deceased has not reached the age of 65 on the date of death, or
- (b) regulation 176 if the deceased has reached the age of 65 on the date of death.

(4) In this regulation “appropriate fraction” has the meaning given in regulation 203(4).

(5) If any dependent child was a dependent child both at the time when the pensionable service in respect of which the pension is payable ceased and at the date of death, the annual amount of the pension in respect of the dependent child or children is the sum of—

- (a) the annual amount that would be payable in respect of the child under regulation 203 as a result of the member dying whilst an active member [<sup>F522</sup>or a non-contributing member] if that regulation applied to members who are also pensioner members (disregarding the

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pensionable service in respect of which the pension is payable (“the pension service”) and any additional pension), and

- (b) the annual amount that would be payable in respect of the child under regulation 204 as a result of the member dying whilst a pensioner member if that regulation applied to members who are also active members [<sup>F523</sup>or non-contributing members] (having regard only to the pension service and disregarding any additional pension).

(6) If, apart from this paragraph, the sum of—

[<sup>F524</sup>(a) the service taken into account (in regulation 203(3)) for the purposes of the calculation of the 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.

### Textual Amendments

**F519** Words in reg. 208(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **71(2)**

**F520** Words in reg. 208(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

**F521** Reg. 208(2)(a)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **71(3)**

**F522** Words in reg. 208(5)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **71(4)(a)**

**F523** Words in reg. 208(5)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **71(4)(b)**

**F524** Reg. 208(6)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **71(5)**

### *Lump sum death benefits*

#### **Lump sum benefits on death: introduction**

**209.**—(1) If a member or a recent leaver dies before reaching the age of 75, a lump sum is payable in accordance with this Chapter.

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) This regulation does not apply if—

(a) the member is—

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- (i) a pensioner member, or
  - (ii) a pension credit member who dies after any benefits attributable to the pension credit have become payable, and
- (b) the death takes place more than five years after the member's pension becomes payable.

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

**210.**—<sup>F525</sup>(1) The lump sum payable on death of an active member or a non-contributing member, who is not a deferred member or a pensioner member, is an amount equal to—

- (a) in the case of a deceased active member, twice the annual average of the member's uprated earnings at the date of death; or
- (b) in the case of a deceased non-contributing member, twice the annual average of the member's uprated earnings on the member's last day of pensionable service.]

<sup>F526</sup>In the case of a 2008 Section Optant, this is subject to regulation 206V <sup>F527</sup>and in the case of a Waiting Period Joiner, this is subject to regulation 260ZA.]]

(2) The lump sum payable on the death of a pensioner member, who is not also an active member <sup>F528</sup>or a non-contributing member] or a deferred member, is, in respect of each pension to which the member is entitled, the lesser of—

- (a) an amount equal to five times the annual rate of the pension (other than any additional pension), less the amount of the pension payments already made to the member, and
- <sup>F529</sup>(b) an amount equal to twice the annual average of the member's uprated earnings by reference to which the pension was calculated, less the aggregate of—
  - (i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 185, and
  - (ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 260K.]

<sup>F528</sup>This is subject to regulations 213A and 214.]

(3) The lump sum payable on the death of a deferred member, who <sup>F530</sup>was not an active member or a non-contributing member] or a pensioner member, is an amount equal to the member's deferred annual pension, multiplied by 2.25.

(4) The lump sum payable on the death of a recent leaver is an amount equal to the deferred annual pension to which the person would have been entitled if the person were entitled to such a pension calculated by reference to the pensionable service the recent leaver was entitled to count in the service that has ceased, multiplied by 2.25.

(5) References in this regulation to a member's deferred annual pension are to the annual pension, in respect of any period of pensionable service, to which the member would have been entitled under regulation 176 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).

<sup>F531</sup>(6) The reference in paragraph (2)(a) to the annual rate of the member's pension is to the member's pension after it has been reduced to take account of—

- (a) the exercise by the member of an option under regulation 185; and
- (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 260K.]

(7) If a pensioner member exercised the option under regulation 189 (election to allocate pension), the reference in paragraph (2)(a) to the amount of the pension payments already made to the member

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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) [<sup>F532</sup>was an active member or a non-contributing member] in service in an employment in respect of which the member has exercised the option under regulation 180 (partial retirement),
  - (b) is a deferred member as a result of service in an employment in respect of which the member has exercised that option, or
  - (c) is a pensioner member by virtue of being entitled to a pension under that regulation, is ignored.

### Textual Amendments

- F525** Reg. 210(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **72(2)**
- F526** Words in reg. 210(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **85(2)**
- F527** Words in reg. 210(1) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 46**, reg. 1(2)
- F528** Words in reg. 210(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **72(3)**
- F529** Reg. 210(2)(b) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **85(3)**
- F530** Words in reg. 210(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **72(4)**
- F531** Reg. 210(6) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **85(4)**
- F532** Words in reg. 210(8)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **72(5)**

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

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



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- (a) [<sup>F533</sup>was an active member or a non-contributing member] otherwise than in service in an employment in respect of which the member has exercised the option under regulation 180 (partial retirement: members aged at least 55), and
- (b) [<sup>F534</sup>was] also a pensioner member.
- (2) The lump sum is an amount equal to the sum of—
- [<sup>F535</sup>(a) five times the annual rate of pension—
- (i) payable under regulation 182(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65,
  - (ii) payable under regulation 176 (normal retirement pensions), if the deceased had reached the age of 65,
- to which the member would have been entitled—
- (aa) in the case of a deceased active member, at the member's date of death, or
  - (bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service, and]
- (b) in respect of each pension to which the person has been entitled for less than 5 years, the lesser of—
- (i) five times the annual rate of the pension payable after exercising any option under regulation 185 (general option to exchange part of pension for lump sum), less the amount of the pension payments already made to the member, and
  - (ii) an amount equal to twice the annual average of the member's uprated earnings at the date of death by reference to which the pension was calculated, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 185 (general option to exchange part of pension for lump sum).
- [<sup>F536</sup>This is subject to paragraph (4).]
- (3) If the pensioner member exercised the option under regulation 189, the reference in paragraph (2)(b) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.
- [<sup>F537</sup>(4) In the case of a 2008 Section Optant—
- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 260K; and
  - (b) the amount of the Optant's uprated earnings for the purposes of paragraph (2)(b)(ii) shall be reduced by the aggregate of—
    - (i) the amount of the lump sum paid to the Optant under regulation 260K, and
    - (ii) the lump sum under regulation 185 referred to in paragraph (2)(b)(ii).]

### Textual Amendments

**F533** Words in [reg. 211\(1\)\(a\)](#) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **73(2)(a)**

**F534** Word in [reg. 211\(1\)\(b\)](#) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and](#)

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Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **73(2)(b)**

**F535** Reg. 211(2)(a) substituted (with effect in accordance with reg. 1(4)(i) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **73(3)**

**F536** Words in reg. 211(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **86(2)**

**F537** Reg. 211(4) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **86(3)**

### Amount of lump sum: dual capacity members: members with pensions under regulation 180

**212.**—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) [<sup>F538</sup>was an active member or a non-contributing member] in service in an employment in respect of which the member has exercised the option under regulation 180 (partial retirement: members aged at least 55), and
- (b) [<sup>F539</sup>was] a pensioner member by virtue of being entitled to a pension under that regulation.

[<sup>F540</sup>(2) The lump sum is an amount—

- (a) equal to the sum of—
  - (i) in the case of a deceased active member, twice the appropriate fraction of the annual average of the member’s uprated earnings at the date of death, or
  - (ii) in the case of a deceased non-contributing member, twice the appropriate fraction of the annual average of the member’s uprated earnings at the member’s last day of pensionable service, and]

[<sup>F541</sup>(b) if the member had been entitled to any pensions under regulation 180 for less than 5 years, the lesser of—

- (i) the total of the guarantee amounts for each of those pensions (see paragraph (3)), and
- (ii) the aggregate lump sum cap (see paragraph (4));

(c) in the case of a 2008 Section Optant, this is subject to paragraph (4) and regulation 260V.]

(3) The guarantee amount for a pension under regulation 180 is five times the annual rate of the pension at the date of death, less the amount of the pension payments already made to the member in respect of the pension.

[<sup>F542</sup>(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the annual average of the member’s uprated earnings by reference to which the pension to which the member became entitled on last exercising the option under regulation 180 was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulation 180 as a result of the member exercising the option under regulation 185; and
- (b) in the case of a 2008 Section Optant the lump sum paid to that Optant under regulation 260K.]

(5) In this regulation “the appropriate fraction” means—



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## DPS

### TDPS

where—

DPS is, where the member continues in pensionable service as an active member [<sup>F543</sup>or a non-contributing member] on the option day (or the last such option day if the option has been exercised more than once), the total percentage of the pension which does not form part of the specified percentage of pension at the option day, and

TDPS is the aggregate of DPS and the total percentage of the pension (at the option day or the last such option day if the option has been exercised more than once) which forms part of the specified percentage of pension.

#### Textual Amendments

- F538** Words in [reg. 212\(1\)\(a\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **74(2)(a)**
- F539** Words in [reg. 212\(1\)\(b\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **74(2)(b)**
- F540** [Reg. 212\(2\)](#) substituted (with effect in accordance with [reg. 1\(4\)\(j\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **74(3)**
- F541** [Reg. 212\(2\)\(b\)\(c\)](#) added (with effect in accordance with [reg. 1\(3\)€](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **87(2)**
- F542** [Reg. 212\(4\)](#) substituted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **87(3)**
- F543** Words in [reg. 212\(5\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), **74(4)**

#### Amount of lump sum: pension credit members

**213.—(1)** The lump sum payable on the death of a pension credit member who dies before any benefits derived from the member's pension credit have become payable is an amount equal to the amount of the annual pension to which the member would have become entitled under regulation 177 if the member had reached the age of 65 on the date of death, multiplied by 2.25.

**(2)** The lump sum payable on the death of a pension credit member who dies after a pension under that regulation has become payable is equal to the lower of—

- (a) the annual amount of the pension that would have been payable to the member during so much of the period of five years beginning with the date on which the pension became payable as falls after the date of death, and
- (b)

## 2AUE – CLS,

where—

AUE is the amount as at the valuation day of the annual average of the uprated earnings of the debit member from whose rights the pension credit member's pension credit is derived, and

CLS is the amount of the lump sum (if any) paid to the pension credit member as a result of the member exercising the option under regulation 185 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 177.

- (3) For the purposes of paragraph (2) the annual amount of the pension is taken to be the sum of—
  - (a) the annual amount of the pension as at the beginning date for that pension, and
  - (b) the increase (if any) in that annual amount under the Pensions (Increase) Act (Northern Ireland) 1971 payable as at the date of death.
- (4) In this regulation—
  - “valuation day” means the day referred to in Article 26(7) of the 1999 Order, and
  - “the beginning date”, in relation to a pension, has the meaning given by section 8(2A) of the Pensions (Increase) Act (Northern Ireland) 1971.

### [<sup>F544</sup>Pension payable when member dies on or after reaching age 75

- 213A.**—(1) If a pensioner member or a pension credit member dies—
- (a) on or after reaching age 75; and
  - (b) before the fifth anniversary of the date on which the member's pension became payable,
- an annual pension, calculated in accordance with paragraph (2), may be payable from the day following the date of the member's death until the anniversary referred to in sub-paragraph (b).
- (2) The pension payable under paragraph (1) is determined by—
- (a) calculating the amount of the lump sum that would have been payable to the pensioner member or pension credit member under regulation 210(2) or, as the case may be, 213 as if on the day the member died the member had not reached the age of 75; and
  - (b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the Scheme actuary for the purpose.
- (3) The “beginning date” of the pension calculated in paragraph (2) will, for the purposes of the Pensions (Increase) Act (Northern Ireland) 1971, be the day immediately following the date of death of the pensioner member or pension credit member.
- (4) The pension calculated under this regulation will be payable in accordance with regulation 214.]

#### Textual Amendments

**F544** Reg. 213A inserted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health](#)

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and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), 67 (with reg. 89)

### Payment of lump sums [<sup>F545</sup>or pensions] on death

**214.—**(1) A lump sum payable under regulation 209 [<sup>F546</sup>or a pension payable under regulation 213A] must be paid in accordance with this regulation.

(2) The lump sum [<sup>F547</sup>or pension] must be paid to the member's personal representatives, except so far as it is payable to a different person [<sup>F548</sup>or body under paragraph (4), (6) or (10)] .

(3) A member may give notice to the Department—

(a) specifying—

- (i) the member's personal representatives,
- (ii) one or more other individuals, or
- (iii) one incorporated or unincorporated body,

to whom the lump sum [<sup>F549</sup>or pension] is to be paid, and

(b) where two or more individuals are specified, specifying the percentage of the payment payable to each of them.

(4) If the member—

- (a) has given notice under paragraph (3) specifying a person, and
- (b) has not revoked that notice,

the lump sum [<sup>F550</sup>or pension] (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person, unless paragraph (5) or (7) applies.

(5) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made, or
- (b) payment to that person is not, in the opinion of the Department, reasonably practicable.

(6) If the member—

- (a) leaves a surviving adult dependant, and
- (b) has not given notice under paragraph (3) or has revoked any notice so given,

the lump sum [<sup>F551</sup>or pension] may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum [<sup>F552</sup>or pension] (or a specified percentage of the lump sum [<sup>F552</sup>or pension] ) would otherwise be payable has been convicted of an offence specified in regulation 254(2) (forfeiture of rights to benefit) and the Department has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(8) A notice under paragraph (3)—

- (a) must be given in writing, and
- (b) may be revoked at any time by a further notice in writing.

(9) The Department may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed—

- (a) £5,000, or

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- (b) any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) (Northern Ireland) Act 1967<sup>M69</sup> as the amount to be treated as substituted for references to £500 in section 1 of that Act.

[<sup>F553</sup>(10) The member's personal representatives may, as part of the distribution of the member's estate, give irrevocable notice to the Department—

- (a) specifying—
- (i) one or more individuals, or
  - (ii) one incorporated or unincorporated body,
- to whom the benefit of the pension under regulation 213A from the date of receipt of the notice by the Department is to be assigned; and
- (b) where two or more individuals are specified, specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made;
- (b) payment to that person or body is not, in the opinion of the Department, reasonably practicable; or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 254 (4) (Forfeiture of rights to benefit) and the Department has directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(12) The prohibition on assignment of benefits in regulation 259 (Prohibition on assignment or charging of benefits) shall not apply to an assignment by personal representatives under this regulation.]

[<sup>F554</sup>(13) In the case of a 2008 Section Optant, this regulation is subject to regulation 260L.]

[<sup>F555</sup>(14) In the case of a Waiting Period Joiner, this regulation is subject to regulation 260Y.]

#### Textual Amendments

**F545** Words in reg. 214 heading inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(2)** (with reg. 89)

**F546** Words in reg. 214(1) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(3)** (with reg. 89)

**F547** Words in reg. 214(2) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(4)(a)** (with reg. 89)

**F548** Words in reg. 214(2) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(4)(b)** (with reg. 89)

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- F549** Words in reg. 214(3) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(5)** (with reg. 89)
- F550** Words in reg. 214(4) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(5)** (with reg. 89)
- F551** Words in reg. 214(6) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(5)** (with reg. 89)
- F552** Words in reg. 214(7) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(6)** (with reg. 89)
- F553** Reg. 214(10)-(12) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **68(7)** (with reg. 89)
- F554** Reg. 214(13) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **88**
- F555** Reg. 214(14) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 47**, reg. 1(2)

#### Marginal Citations

**M69** 1967 c. 5 (N.I.)

### Tax treatment under the Finance Act 2004 of lump sums payable on pensioners' deaths

**215.**—(1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is treated for the purposes of the Finance Act 2004 as a pension protection lump sum death benefit if the member has given the Scheme administrator a statement in writing that any such lump sum is to be treated as such a benefit.

(2) In this regulation “pensioner's lump sum” means—

- (a) a lump sum payable under regulation 209 to which regulation 210(2) applies, or
- (b) so much of a lump sum payable under regulation 209 as is calculated under regulation 211(2).

(3) Paragraph (4) applies if the person who is the Scheme administrator for the purposes of section 206 of the Finance Act 2004 (“the administrator”) is liable for tax under that section in respect of a pension protection lump sum death benefit.

(4) The administrator may deduct from the lump sum the tax payable in respect of it.

### *Miscellaneous and general provisions*

#### **Death during period of absence**

**216.**—(1) This regulation applies if a person dies during a period when the person is absent from work because of—

- (a) illness or injury,
- (b) ordinary maternity leave,
- (c) ordinary adoption leave,
- (d) paternity leave or parental leave,

and the earnings used to calculate the person's pensionable pay have ceased to be paid before the person's death.

(2) Any benefits payable under this Chapter must be calculated as if the person had died in pensionable service on the day before those earnings ceased.

#### **Polygamous marriages**

**217.**—(1) This regulation applies if—

- (a) a member dies without leaving a surviving adult dependant, and
- (b) at the date of death the member was married to one or more persons under a law which permits polygamy.

(2) If, had the member left a surviving adult dependant, any benefit would have been payable to the surviving adult dependant as such, that benefit is payable—

- (a) if there is one such person, to that person, or
- (b) if there are two or more such persons, to those persons in equal shares.

(3) Such a person's share of a pension will not be increased on the death of any such person.

#### **Dual capacity membership: death benefits**

**218.**—(1) This paragraph applies if the deceased member was—

- (a) a member of [<sup>F556</sup>this Section of] the Scheme of two or more of the kinds specified in paragraph (2),
- (b) a pensioner member in respect of two or more pensions, or
- (c) a deferred member in respect of two or more pensions.

(2) The kinds of member are—

- (a) an active member,
- (b) a deferred member,
- (c) a pensioner member, and
- (d) a pension credit member.

(3) If paragraph (1) applies, the general rule is that—

- (a) benefits are payable in respect of the member under this Chapter as if two or more members of the kinds in question had died (so that two or more pensions or lump sums are payable in respect of the one deceased member), and
- (b) the amounts payable are determined accordingly.

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(4) Paragraph (3) does not apply where specific provision to the contrary is made about a person to whom that paragraph would otherwise apply.

(5) See, in particular—

- (a) regulation 196 (amount of pensions under regulation 194: active members),
- (b) regulation 197 (amount of pensions under regulation 194: pensioner members),
- (c) regulation 200 (re-employed pensioners: adult survivor pensions in initial period),
- (d) regulation 201 (surviving children's pensions),
- (e) regulation 208 (amount of children's pension under regulation 201: re-employed pensioners),
- (f) regulation 209 (lump sum benefits on death: introduction),
- (g) regulation 211 (amount of lump sum: dual capacity members (disregarding regulation 180 employments)),
- (h) regulation 212 (amount of lump sum: dual capacity members: members with pensions under regulation 180), and

[<sup>F557</sup>(hh) regulation 213A (Pension payable when member dies on or after age 75);]

(i) Chapter 7 (re-employment and rejoining [<sup>F558</sup>this Section of] the Scheme).

(6) If a person who is a pension credit member is entitled to two or more pension credits—

- (a) benefits are payable in respect of the person under this Chapter as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of the one pension credit member), and
- (b) the amounts of those benefits are determined accordingly.

#### Textual Amendments

**F556** Words in [reg. 218\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F557** [Reg. 218\(5\)\(hh\)](#) inserted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **69** (with [reg. 89](#))

**F558** Words in [reg. 218\(5\)\(i\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Guaranteed minimum pensions for surviving spouses and civil partners

**219.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 13 of the 1993 Act in relation to benefits in respect of the deceased member under [<sup>F559</sup>this Section of] the Scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person,



- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person, and
  - (c) paragraph (2) is without prejudice to the generality of this paragraph.
- (2) If apart from this regulation—
- (a) no pension would be payable to the surviving spouse or civil partner under this Chapter, or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,
- a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.
- (3) Paragraph (2) does not apply to a pension that is forfeited—
- (a) as a result of a conviction for treason, or
  - (b) in a case where an offence within regulation 254(2)(b) is committed.

#### Textual Amendments

**F559** Words in [reg. 219\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

## CHAPTER 6

### TRANSFERS

#### *Transfers out*

#### **Introduction: rights to transfer value payment**

**220.**—(1) This Chapter supplements the rights conferred by or under Chapter IV of Part IV of the 1993 Act (transfer values) and applies to practitioners.

(2) This Chapter is without prejudice to that Chapter or Chapter V of that Part <sup>M70</sup> (early leavers: cash transfer sums and contribution refunds).

(3) Accordingly—

- (a) a member to whom Chapter IV of that Part applies (see section 89(1)(a) of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the member under [<sup>F560</sup>this Section of] the Scheme, and
- (b) a member to whom Chapter V of that Part applies (see section 97AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) Subject to paragraph (5) and the other provisions of this Chapter, any other member is entitled to require such a payment as if such rights had accrued to or in respect of him by reference to the pensionable service the member is entitled to count under [<sup>F561</sup>this Section of] the Scheme (and references in this Chapter to the member's accrued rights or benefits are to be read accordingly).

(5) Paragraph (4) does not—

- (a) give any rights to an active member,
- (b) give any rights to a pensioner member in respect of the pension to which the member has become entitled, or



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- (c) give any rights to a pension credit member in respect of rights that are directly attributable to a pension credit.

#### Textual Amendments

- F560** Words in [reg. 220\(3\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F561** Words in [reg. 220\(4\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Marginal Citations

- M70** [Chapter 5](#) (sections 97AA to 97AI) is inserted by Article 241 of the Pensions (Northern Ireland) Order 2005 (No. 255 N.I. 1)).

### Applications for statements of entitlement

**221.**—(1) A member who requires a transfer value payment to be made must apply in writing to the Department for a statement of the amount of the cash equivalent of the member's accrued benefits under [<sup>F562</sup>this Section of] the Scheme at the guarantee date (“a statement of entitlement”).

(2) In this Part, “the guarantee date” means any date that—

- (a) falls within the required period,
- (b) is chosen by the Department,
- (c) is specified in the statement of entitlement, and
- (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(3) In counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

(4) In paragraph (2) “the required period” means—

- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement, or
- (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Department, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

#### Textual Amendments

- F562** Words in [reg. 221\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

### **Applications for transfer value payments: general**

**222.**—(1) A member who has applied for and received a statement of entitlement under regulation 221 may apply in writing to the Department for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation 223(2)).

(3) In this Part such a payment is referred to as “the guaranteed cash equivalent transfer value payment”.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Department may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Department, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

### **Applications for transfer value payments: time limits**

**223.**—(1) An application under regulation 222(1) must be made before the end of the period of 3 months beginning with the guarantee date, and, subject to paragraph (4), the payment must be made no later than—

- (a) 6 months after that date, or
- (b) if it is earlier, the date on which the member reaches 65.

(2) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made, or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1% above the base rate.

(3) Paragraph (4) applies if—

- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to [F563this Section of] the Scheme, and
- (b) it appears to the Department that the proceedings may lead to all or part of the member's benefits being forfeited under regulation 254 (forfeiture of rights to benefit).

(4) The Department may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.

(5) In any case where a direction is given under regulation 254 for the forfeiture of a member's benefits, this regulation applies as if the amount specified in the statement of entitlement were reduced by an amount equal to the value of the benefits forfeited, as determined by the Scheme actuary.

(6) In respect of an applicant who does not fall within regulation 176(2)—

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- (a) in the case of an application that requires the guaranteed cash equivalent transfer value payment to be made to a registered occupational pension scheme or a registered personal pension scheme, an application under paragraph (1) may only be made if—
  - (i) the applicant became a member of that scheme not later than the end of the period of 12 months beginning with the day after the date on which member ceased to be in the pensionable service in which the rights accrued (“the leaving date”), and
  - (ii) the application is made not later than—
    - (aa) the end of the period of 12 months beginning with the day on which the applicant became a member of that scheme, or
    - (bb) if the applicant became a member of that scheme on or before the leaving date, the end of the period of 12 months beginning with the day after the leaving date,
- (b) in any other case, an application under paragraph (1) may only be made before the end of the period of 12 months beginning with the day after the leaving date.

#### Textual Amendments

**F563** Words in [reg. 223\(3\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)

#### Ways in which transfer value payments may be applied

**224.**—(1) A member may only require the Department to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 91 of the 1993 Act.

(2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter IV of Part IV of that Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member's accrued rights to a guaranteed minimum pension, or
- (b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the guaranteed cash equivalent transfer value payment if section 92(2) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights).

(5) A transfer payment may only be made to—

- (a) a pension scheme that is registered under Chapter 2 of Part 4 of the Finance Act 2004, or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act).

#### Calculating amounts of transfer value payments

**225.**—<sup>F564</sup>(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Department in accordance with the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996.

This is subject to paragraphs (2), (3) and (5).

(2) Before determining the factors to be used in the calculation of the member's guaranteed cash equivalent, the Department shall take advice from the Scheme actuary.]

(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.

[<sup>F565</sup>(4) In paragraph (3), “minimum transfer value” means—

(a) in the case of a person other than a 2008 Section Optant, the sum of—

- (i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated, and
- (ii) any contributions paid by the person under Chapter 3 of this Part as a result of which the person is entitled to count such service;

(b) in the case of a 2008 Section Optant, the sum of—

- (i) any transfer value payments that have been made to the 1995 Section in respect of the Optant,
- (ii) any contributions paid by the Optant under regulation 10 as modified by paragraph 10 of Schedule 2 to the 1995 Regulations (Contributions by members) in respect of superannuable employment in that Section on or before 31st March 2008, and
- (iii) any payments made by the Optant under regulation 67 as modified by paragraph 20 of Schedule 2 to the 1995 Regulations (Right to buy additional service) for the purchase of additional service,

which entitle the Optant to count, under Chapter 10 of this Part, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.]

(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[<sup>F566</sup>; and

(c) separately in respect of—

(i) the aggregate of any amounts of pensionable earnings that the member is entitled to count for the purpose of calculating benefits payable to, or in respect of, the member that fall to be treated as—

(aa) a capped increase to pensionable earnings in accordance with regulation 231; or

(bb) an amount of capped Optant pensionable earnings in accordance with regulation 260I, and

(ii) any amount of pensionable earnings that do not fall to be so treated.]

[<sup>F567</sup>(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 260K.]

#### Textual Amendments

**F564** Reg. 225(1)(2) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\)](#)

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and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **70** (with reg. 89)

**F565** Reg. 225(4) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **89(2)**

**F566** Reg. 225(5)(c) and word added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **89(3)**

**F567** Reg. 225(6) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **89(4)**

### Effect of transfers-out

**226.** If a transfer value payment is made under this Chapter in respect of a person's rights under <sup>F568</sup>this Section of] the Scheme, those rights are extinguished.

#### Textual Amendments

**F568** Words in reg. 226 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

### Transfers in

#### Right to apply for acceptance of transfer value payment from another scheme

**227.**—(1) Subject to the provisions of this Chapter, an active member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of him under any kind of scheme or arrangement to which paragraph (2) applies, other than a FSAVC, to be accepted by <sup>F569</sup>this Section of] the Scheme.

(2) This paragraph applies to—

(a) a registered occupational pension scheme <sup>F570</sup>other than a corresponding health service scheme],

(b) a registered personal pension scheme,

(c) a registered buy-out policy, and

<sup>F571</sup>(d) a corresponding 1995 scheme; and

(e) a corresponding 2008 scheme.]

<sup>F572</sup>(2A) A member who makes an application for a transfer value to be accepted by the Department in respect of his rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of his rights under a corresponding 1995 scheme.]

(3) Paragraph (1) does not apply to rights that are directly attributable to a pension credit.

(4) In this regulation “FSAVC” means—

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- (a) a scheme which—
    - (i) immediately before 6th April 2006 was approved by the Commissioners for Her Majesty's Revenue and Customs by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes), and
    - (ii) became a registered scheme for the [<sup>F573</sup>purposes of the Finance Act 2004] by virtue of Schedule 36 to that Act, or
  - (b) a scheme established on or after that date as a registered free-standing AVC scheme.
- [<sup>F574</sup>(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.]

#### Textual Amendments

- F569** Words in reg. 227(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F570** Words in reg. 227(2)(a) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **71(2)** (with reg. 89)
- F571** Reg. 227(2)(d)(e) substituted for reg. 227(2)(d) (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **71(3)** (with reg. 89)
- F572** Reg. 227(2A) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **71(4)** (with reg. 89)
- F573** Words in reg. 227(4)(a)(ii) substituted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **71(5)** (with reg. 89)
- F574** Reg. 227(5) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **90**

#### Procedure for applications under regulation 227

- 228.—**(1) An application under regulation 227—
- (a) must be made in writing,
  - (b) must specify the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment,
  - (c) may only be made during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of [<sup>F575</sup>this Section of] the Scheme and before the applicant reaches the age of 65,
  - (d) if the Department so requires, may only be made if the member has first requested a statement—



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- (i) in the case of a transfer made under the public sector transfer arrangements, of the [<sup>F576</sup>increase to pensionable earnings and the] service that the member will be entitled to count as a result of the transfer if the payment is accepted by the Department, and
  - (ii) in a case where the transfer is not made under those arrangements [<sup>F577</sup>(including a transfer of rights from a corresponding 1995 scheme)] , of the [<sup>F578</sup>increase to pensionable earnings and the] service that member will be entitled so to count if the payment is so accepted by the Department within such period as is specified in the statement, and
  - (e) must meet such other conditions as the Department may require.
- (2) A statement given to the member in pursuance of a such a request as is mentioned in paragraph (1)(d)—
- (a) in the case mentioned in paragraph (1)(d)(i), must inform the member of the effect (if any) of regulation [<sup>F579</sup>231] in the member's case, and
  - (b) in the case mentioned in paragraph (1)(d)(ii), must specify such amount as is calculated in accordance with guidance and tables provided by the Scheme actuary for the purpose.
- [<sup>F580</sup>(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of—
- (a) the increase to pensionable earnings that will count under this section of the Scheme for the purposes of calculating benefits payable to or in respect of the member; and
  - (b) the amount of pensionable service that will count for the purposes of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139.]

### Textual Amendments

- F575** Words in reg. 228(1)(c) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F576** Words in reg. 228(1)(d)(i) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **91(2)(a)**
- F577** Words in reg. 228(1)(d)(ii) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **72(2)** (with reg. 89)
- F578** Words in reg. 228(1)(d)(ii) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **91(2)(b)**
- F579** Word in reg. 228(2)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **91(3)**
- F580** Reg. 228(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and

Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **91(4)**

**[<sup>F581</sup> Acceptance of transfer value payments**

**229**

(1) If an application is duly made by a member under regulation 227, the Department may accept the transfer value payment if such conditions as the Department may require are met.

This is subject to paragraph (10).

(2) If the Department accepts the payment, the member is entitled to count—

- (a) the appropriate increase in the member's pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the member under the Scheme; and
- (b) the relevant period of pensionable service for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139.

This is subject to paragraph (8).

(3) In paragraph (2)(a) “the appropriate increase” means the increase calculated in accordance with regulation 230.

(4) In paragraph (2)(b) “the relevant period” means the period calculated by reference to whichever of paragraphs (5), (6) or (7) apply in respect of the transfer payment.

(5) If the Department accepts the payment in respect of a member of a corresponding 1995 scheme, “the relevant period” means the period calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the corresponding 1995 scheme.

(6) If the Department accepts the payment under the public sector transfer arrangements, “the relevant period” means the period of pensionable service the member is entitled to count calculated—

- (a) in accordance with those arrangements; and
- (b) by reference to the guidance and tables provided by the Scheme actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

(7) If the Department accepts the payment from a scheme that does not participate in the public sector transfer arrangements, “the relevant period” means a period equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made.

(8) Any part of a member's increase to pensionable earnings under paragraph (2)(a) that falls to be treated as a capped increase to pensionable earnings shall count as a capped increase to pensionable earnings for the purpose of paragraph (5) of regulation 225.

(9) For the meaning of “capped increase to pensionable earnings”, see regulation 231.

(10) The Department may not accept a transfer value payment if—

- (a) it would be applied in whole or in part in respect of the member's or the member's spouse's entitlement to a guaranteed minimum pension; and
- (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme actuary for the purposes of this paragraph.

This is subject to paragraph (11).

(11) Paragraph (10) does not apply if the transfer would be paid under the public sector transfer arrangements.

(12) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.]



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### Textual Amendments

**F581** Reg. 229 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **92**

### [<sup>F582</sup>Calculation of increase to pensionable earnings as the result of a transfer-in]

**230.**—(1) The increase in pensionable earnings that the member is entitled to count under regulation 229 as the result of a transfer is calculated, subject to paragraphs (2) to (6), in accordance with guidance and tables provided by the Scheme actuary for the purpose by reference to any relevant factors as at the date on which the transfer payment is received by the Department.

[<sup>F583</sup>(2) Subject to paragraph (4), for the purposes of the calculation under paragraph (1), the benefits in respect of the transfer payment will be calculated by increasing the member's pensionable earnings for—

- (a) the financial year in which the member joined this Section of the Scheme; or
  - (b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the day on which the member joined this Section of Scheme (“the starting day”).]
- (3) The amount of the increase referred to in paragraph (2) will be calculated by—
- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made,
  - (b) calculating the [<sup>F584</sup>reckonable] pay that would have given rise to a cash equivalent in respect of officer service under regulation 98 (calculating amounts of transfer value payments) [<sup>F585</sup>equal to the amount of the transfer payment] , and
  - (c) increasing the member's pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member's pensionable pay had been equal to the [<sup>F586</sup>reckonable] pay mentioned in sub-paragraph (b) throughout that period.
- (4) But [<sup>F587</sup>paragraph (2)(b)] does not apply if—
- (a) a written statement estimating the increase in pensionable earnings that the member would be entitled to count as result of the transfer was given to the member by the Department during the period of 3 months ending 12 months after the starting day, and
  - (b) the transfer payment is received by the Department less than 3 months after the date of the statement.
- (5) If the transfer value payment is accepted under the public sector transfer arrangements, the increase in pensionable earnings the member is entitled to count is calculated—
- (a) in accordance with those arrangements, and
  - (b) by reference to the guidance and tables provided by the Scheme actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

(6) If the transfer value payment is accepted from a [<sup>F588</sup>corresponding 2008 scheme] , the increase in pensionable earnings the member is entitled to count is the increase that the member would be entitled to count if—

- (a) the member's employment to which that scheme applied was HSC employment in respect of which the member was a member of [<sup>F589</sup>this Section of] the Scheme, and
- (b) the member's contributions to that scheme were contributions to [<sup>F589</sup>this Section of] the Scheme.

<sup>F590</sup>(7) .....

[<sup>F591</sup>(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.]

**Textual Amendments**

- F582** Words in reg. 230 heading substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **93(2)**
- F583** Reg. 230(2) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **93(3)**
- F584** Words in reg. 230(3)(b) substituted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **74(3)** (with reg. 89)
- F585** Words in reg. 230(3)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **93(4)**
- F586** Words in reg. 230(3)(c) substituted (with effect in accordance with reg. 1(5) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **74(4)** (with reg. 89)
- F587** Words in reg. 230(4) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **74(5)** (with reg. 89)
- F588** Words in reg. 230(6) substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **74(6)** (with reg. 89)
- F589** Words in reg. 230(6) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F590** Reg. 230(7) omitted (with effect in accordance with reg. 1(3) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **74(7)** (with reg. 89)
- F591** Reg. 230(7) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **93(5)**

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**[<sup>F592</sup>Meaning of “Capped increase to pensionable earnings”]**

**231.**—(1) This regulation applies if—

- (a) the Department accepts a transfer value payment in respect of a member under a transfer to which the public sector transfer arrangements apply, and
- (b) the service in respect of which the transfer is made was, or included, capped service in employment to which the Scheme by which the payment is made (“the transferring scheme”) applied.

**[<sup>F593</sup>(2) For the purposes of this Part—**

- (a) any part of the increase to pensionable earnings that the member is entitled to count under regulation 229(2)(a); and
- (b) which is the result of capped service in employment to which the transferring scheme applied,

is a capped increase to pensionable earnings.]

(3) For the purposes of paragraph (1)(b), the service in respect of which the transfer is made was capped service so far as—

- (a) in the case of service before 6th April 2006, the member was an active member of the transferring scheme whose pension under that scheme in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) of the Income and Corporation Taxes Act 1988(a), or
- (b) in the case of service on or after 6th April 2006, the member was an active member of the transferring scheme whose pension under that scheme in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum under that section was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit, the member's remuneration in any tax year would have exceeded the amount of the limit.

**[<sup>F594</sup>(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 260J.]**

**Textual Amendments**

**F592** Words in [reg. 231 heading](#) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **94(2)**

**F593** [Reg. 231\(2\)](#) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **94(3)**

**F594** [Reg. 231\(5\)](#) added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **94(4)**

**Public sector transfer arrangements**

**232.** This Chapter applies in the case of a transfer to which the public sector transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) any provision in this Chapter provides otherwise, or
- (b) the arrangements themselves make different provision.

### Bulk transfers out

**233.**—(1) This regulation applies if—

- (a) the employment of one or more active members (“the transferring employees”) is transferred without their consent to a new employer,
- (b) on that transfer the transferring employees cease to be eligible to be active members of [<sup>F595</sup>this Section of] the Scheme,
- (c) after that transfer the transferring employees become active members of another occupational pension scheme (“the new employer's scheme”),
- (d) the Department has agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer's scheme, after consultation with the Scheme actuary, and
- (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.

(2) In the case of the transferring members or the transferred members the transfer value payment to be paid—

- (a) is not calculated in accordance with regulation 225, but
- (b) is to be such amount as the Department determines to be appropriate in accordance with the special terms after consulting the Scheme actuary.

(3) This Chapter has effect with such modifications as are necessary to give effect to those terms.

(4) If the transfer is directly or indirectly attributable to a statutory provision, this Chapter has effect with such modifications as the Department considers necessary in consequence of the transfer.

(5) Where a member to whom this regulation applies is also a member to whom Part 2 applies, a bulk transfer under this regulation also operates as a transfer of that member's rights under Part 2.

#### Textual Amendments

**F595** Words in [reg. 233\(1\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), [Sch. 2 Pt. 1](#)

### Bulk transfers in

**234.**—(1) This regulation applies if—

- (a) the employment of one or more persons (“the transferred employees”) is transferred without their consent to a new employer,
- (b) on that transfer the transferred employees cease to be active members of an occupational pension scheme (“the former employer's scheme”),
- (c) after that transfer the transferred employees become active members of [<sup>F596</sup>this Section of] the Scheme,
- (d) the Department has agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer's scheme, after consulting the Scheme actuary, and

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(e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.

(2) [<sup>F597</sup>This Section of] the Scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).

(3) If the transfer is directly or indirectly attributable to a statutory provision, [<sup>F597</sup>this Section of] the Scheme has effect with such modifications as the Department considers necessary in consequence of the transfer.

#### Textual Amendments

**F596** Words in [reg. 234\(1\)\(c\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

**F597** Words in [reg. 234\(2\)\(3\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

#### EU and other overseas transfers

**235.**—(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with any scheme for the provision of retirement benefits established outside the United Kingdom.

(2) [<sup>F598</sup>This Section of] the Scheme applies in relation to the member with such modifications as the Department considers necessary to comply with—

- (a) the terms of those arrangements,
- (b) any applicable provision contained in or made under any statutory provision, and
- (c) the requirements to be met by a scheme registered under Chapter 2 of Part 4 of the Finance Act 2004.

#### Textual Amendments

**F598** Words in [reg. 235\(2\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

#### <sup>F599</sup>Transfers across

#### Textual Amendments

**F599** [Reg. 235A](#) and cross-heading inserted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), regs. 1(2), **75** (with reg. 89)

### Transfers across from the <sup>F600</sup>1995 Section]

**235A.**—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member's rights under the <sup>F601</sup>1995 Section], pursuant to regulation 59 of the 1995 Regulations, may apply to convert that cash equivalent value into rights under this <sup>F602</sup>Section of the] Scheme.

(2) An application under paragraph (1)—

- (a) must be made in writing using an application form provided for the purpose by the Department;
- (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation 59 of the 1995 Regulations;
- (c) may only be made if the member has first been furnished with a statement of the pensionable service and increase in pensionable earnings that the member will be entitled to count under this <sup>F603</sup>Section of the] Scheme if the application is accepted by the Department;
- (d) must meet such other conditions as the Department may require; and
- (e) is irrevocable.

(3) The statement mentioned in paragraph (2)(c) must—

- (a) inform the member of the amount of increase in pensionable earnings that will count under this <sup>F604</sup>Section of the] Scheme for the purposes of calculating benefits payable to or in respect of the member; and
- (b) inform the member of the amount of pensionable service that will count under this <sup>F604</sup>Section of the] Scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139.

(4) The amount of the increase in pensionable earnings mentioned in paragraph (3)(a) will be calculated by—

- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in the <sup>F605</sup>1995 Section] ;
- (b) calculating the reckonable pay that would have given rise to a cash equivalent in respect of that officer service under regulation 98 (Calculating amounts of transfer value payments); and
- (c) increasing the member's pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member's pensionable pay had been equal to the reckonable pay mentioned in sub-paragraph (b) throughout that period.

(5) The amount of pensionable service mentioned in paragraph (3)(b) will be calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the HPSS Superannuation Scheme 1995.

(6) If the Department accepts an application under paragraph (1)—

- (a) the member is entitled to count under this <sup>F606</sup>Section of the] Scheme the period of pensionable service mentioned in paragraph (3)(b) for the purpose specified therein;
- (b) that period of pensionable service shall be credited to the member on the day that the Department received the member's application;



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- (c) the member is entitled to count the increase in pensionable earnings calculated under paragraph (4) for the purposes of calculating benefits payable to or in respect of the member under this <sup>F607</sup>Section of the] Scheme; and
- (d) that increase in pensionable earnings shall be credited to the member in the financial year during which the day that the Department received the member's application falls.]

### Textual Amendments

- F600** Words in reg. 235A heading substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F601** Words in reg. 235A(1) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F602** Words in reg. 235A(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F603** Words in reg. 235A(2)(c) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F604** Words in reg. 235A(3)(a)(b) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F605** Words in reg. 235A(4)(a) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**
- F606** Words in reg. 235A(6)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**
- F607** Words in reg. 235A(6)(c) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**

## CHAPTER 7

### RE-EMPLOYMENT AND REJOINING THE SCHEME

#### *Preliminary*

#### **Application of Chapter 7**

- 236.—**(1) This Chapter applies, subject to paragraphs (4) to (7), to persons who—
- (a) have been active members of <sup>F608</sup>this Section of] the Scheme in respect of their service in an employment,

- (b) have ceased to be employed in that employment and have become deferred members or pensioner members of [<sup>F608</sup>this Section of] the Scheme because of their rights in respect of that service,
  - (c) become employed again in an employment that qualifies them to belong to [<sup>F608</sup>this Section of] the Scheme, and
  - (d) become active members of [<sup>F608</sup>this Section of] the Scheme in respect of their service in that employment.
- (2) In these Regulations a member to whom this Chapter applies is referred to as a “re-employed member”.
- (3) In this Chapter, in relation to any re-employed member—
- (a) the service referred to in paragraph (1)(a) is referred to as “the earlier service”, and
  - (b) the service referred to in paragraph (1)(d) is referred to as “the later service”.
- (4) This Chapter also applies to members who—
- (a) cease to be active members in respect of their service in an employment as the result of exercising the option under regulation 157, and
  - (b) later become active members in that or another employment,
- as it applies to members who cease to be employed in the employment in which they are active members, and paragraph (3) must be read accordingly.
- (5) This Chapter does not apply if the earlier service and the later service are treated as a single continuous period of pensionable service under regulation 140(5) (pensionable service: breaks in service).
- (6) Regulation 239 applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to [<sup>F609</sup>this Section of] the Scheme.
- (7) If a re-employed member ceases to be an active member again, this Chapter applies again in respect of the later service as if it were the earlier service (and so on).

#### Textual Amendments

**F608** Words in [reg. 236\(1\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F609** Words in [reg. 236\(6\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

*General rule: separate treatment of service etc except where unfavourable to member*

#### General rule: separate treatment of service etc

- 237.**—(1) The general rule is that, in accordance with regulations 192 and 218—
- (a) the re-employed member's pensionable service in respect of the earlier service and the later service are treated separately, and
  - (b) the re-employed member's pensionable earnings in respect of the earlier service and the later service is determined separately.



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- (2) This regulation is subject to the provisions mentioned in regulations 192(4) and 218(5).

### Exception to general rule in regulation 237

**238.**—(1) The general rule in regulation 237 does not apply if—

- (a) at the time that the member first becomes entitled to a pension under [<sup>F610</sup>this Section of] the Scheme in respect of the earlier service or the later service, or
- (b) if it is earlier, at the time of the member's death,

in the opinion of the Department the benefits payable to or in respect of the member would be more valuable if that general rule were disregarded.

(2) Accordingly, in a case within paragraph (1)—

- (a) the member's pensionable service in respect of the earlier service and the later service are treated as one single continuous period,
- (b) the member's qualifying service in respect of the earlier service and the later service are each treated as one single continuous period,
- (c) the member is not treated as a deferred member in respect of the earlier service, and
- (d) the member's pensionable earnings in respect of the later period may be determined by reference to the earlier period as well as the later period (as a result of regulation 140(5)).

#### Textual Amendments

**F610** Words in [reg. 238\(1\)\(a\)](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and [Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**

### *Special rules about re-employment of ill-health pensioners*

#### Effect of re-employment on tier 2 ill-health pensions

**239.**—(1) This regulation applies if a member who is entitled to a tier 2 pension under regulation 182 in respect of earlier service—

- (a) did not opt to exchange that pension for a lump sum in accordance with regulation 186, and
- (b) has re-entered employment (the “further employment”).

(2) Subject to paragraphs (3) and (4), the member ceases to be entitled to the tier 2 ill-health pension under regulation 182, and becomes entitled to a tier 1 ill-health pension under that regulation.

(3) In a case where the further employment is—

- (a) not HSC employment, and
- (b) an excluded employment,

paragraph (2) does not apply.

(4) In a case where the further employment is—

- (a) HSC employment, and
- (b) an excluded employment

paragraph (2) does not apply during the initial period.

(5) As regards a further employment in HSC employment—

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- (a) paragraph (2) applies from the first tier 1 ill-health pension payment date which falls after the first anniversary of the member's re-entry into HSC employment, whether or not that day is part of a continuous period of further HSC employment beginning with entry into that employment, and
  - (b) the member may not rejoin [<sup>F611</sup>this Section of] the Scheme in respect of that employment or any other HSC employment until after the first anniversary of the member's re-entry into HSC employment, whether or not that or any other HSC employment is an excluded employment.
- (6) For the purposes of this regulation—
- (a) an employment is an excluded employment at any time in a scheme year, in relation to a member, if the member's earnings from the employment and any other employments are such that the lower earnings limit for that year is not exceeded,
  - (b) for the purposes of paragraph (2) an employment that has been an excluded employment in a scheme year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the tier 2 ill-health pension in which the limit described in sub-paragraph (a) is first exceeded, and
  - (c) “the initial period” means the period of 12 months beginning with the day on which the member first enters an employment which results in this regulation applying.
- (7) A member who, before attaining the age of 65, has ceased to be entitled to a tier 2 ill-health pension under paragraph (2), and who—
- (a) is in further HSC employment and ceases to be employed at all during the initial period, or
  - (b) is in further employment that is not HSC employment and ceases to be employed in that further employment within a period of one year beginning with the day on which that further employment ceased to be an excluded employment,
- may apply to the Department under this paragraph to become entitled to a tier 2 ill-health pension.
- (8) An application under paragraph (7)—
- (a) where paragraph (7)(a) applies, must—
    - (i) state that the member has ceased to be employed at all,
    - (ii) be made within the initial period,
    - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 182(3)(a);
  - (b) where paragraph (7)(b) applies, must—
    - (i) state that the member has ceased to be employed at all,
    - (ii) be made within a period of one year beginning with the day on which that employment ceased to be an excluded employment,
    - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 182(3)(a).
- (9) If on an application under paragraph (7) the Department is satisfied that the member meets the condition in regulation 182(3)(a), from the day following that on which the member's last employment ceased—
- (a) the member ceases to be entitled to the tier 1 ill-health pension under regulation 182, and
  - (b) becomes entitled to a tier 2 ill-health pension under that regulation in respect of the earlier service.
- (10) A member who falls within paragraph (1) must—
- (a) notify the Department if the member is in HSC employment at the end of the initial period,

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- (b) notify the Department if the member's aggregate earnings for the purpose of national insurance from employments held in a tax year are such that the lower earnings limit is exceeded,
  - (c) provide the Department or any other person specified by the Department with such further information as the Department specifies concerning any further employment.
- (11) This regulation is subject to regulation 240 (re-employed tier 1 ill-health pensioners).

#### Textual Amendments

**F611** Words in [reg. 239\(5\)\(b\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Re-employed tier 1 ill-health pensioners

**240.**—(1) This regulation applies to re-employed members who are entitled to a tier 1 ill-health pension under regulation 182 in respect of the earlier service.

(2) For the purposes of determining whether a member can count 45 years of pensionable service for any purpose, the earlier service and the later service are aggregated.

(3) If the re-employed member became entitled to a tier 1 ill-health pension for the earlier service, and on the termination of the later service the member becomes entitled to—

- (a) a tier 1 ill-health pension, or
- (b) a tier 2 ill-health pension,

under regulation 182 in respect of the later service, the re-employed member is entitled to the benefits set out in paragraph (4).

(4) The benefits mentioned in paragraph (3) are—

- (a) the member's original tier 1 ill-health pension in respect of his earlier service, and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the later service.

[<sup>F612</sup>This is subject to paragraph (5).]

[<sup>F613</sup>(5) If the re-employed member—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier service;
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier service in accordance with regulation 183(3); and
- (c) on the termination of the later service, the member becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of that later service,

the re-employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are—

- (a) a tier 2 ill-health pension paid in accordance with regulation 182 in respect of the member's earlier service; and
- (b) a tier 1 ill-health pension in respect of the member's later service.]

### Textual Amendments

**F612** Words in [reg. 240\(4\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [75\(2\)](#)

**F613** [Reg. 240\(5\)\(6\)](#) added (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), [regs. 1\(2\)](#), [75\(3\)](#)

## CHAPTER 8

### ABATEMENT

#### Application of Chapter 8

- 241.**—(1) This Chapter applies to practitioners.
- (2) This Chapter applies if—
- (a) a person who is a pensioner member of [<sup>F614</sup>this Section of] the Scheme is employed in HSC employment, or
  - (b) the person's pension is a pension under—
    - (i) regulation 182 (early retirement on ill-health: active members),
    - (ii) regulation 184 (early retirement on ill-health: deferred members), and
  - (c) the person has not reached the age of 65.
- (3) In this Chapter “HSC employment” includes—
- (a) employment to which regulations made under sections 10 (1) and (2) and 12 (1) and (2) of, and Schedule 3 to, the Superannuation Act 1972 apply,
  - (b) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967 <sup>M71</sup>,
  - (c) employment to which regulations made under section 10 of the Superannuation Act 1972 <sup>M72</sup> and having effect in Scotland apply,
  - (d) employment [<sup>F615</sup>commencing on or before 31st March 2012] to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies,
  - (e) employment with an employer with whom an agreement has been made under section 235 of the National Health Service Act 2006.
- (4) In this Chapter, subject to paragraph (5)—
- (a) a person to whom this Chapter applies is referred to as an “employed pensioner”,
  - (b) the pension to which the employed pensioner is entitled is referred to as the “old service pension”,
  - (c) the employment in respect of which the pension is payable is referred to as “the old employment”, and
  - (d) the employment in which the employed pensioner is employed is referred to as the “new employment”.
- (5) This Chapter applies whether or not the person is an active member of [<sup>F616</sup>this Section of] the Scheme in the new employment.

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(6) For the purposes of this Chapter, so much of any pension as is additional pension is ignored.

#### Textual Amendments

- F614** Words in [reg. 241\(2\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**
- F615** Words in [reg. 241\(3\)\(d\)](#) inserted (1.4.2012) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/78\)](#), [regs. 1\(2\)](#), **19**
- F616** Words in [reg. 241\(5\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

#### Marginal Citations

- M71** 1967 c. 28  
**M72** 1972 c. 11

#### Information

- [<sup>F617</sup>**242.**—(1) A person who becomes an employed pensioner must—
- (a) inform the person’s employer in the new employment, and any other person that the Department may specify, that the old service pension is payable; and
  - (b) where requested, provide any information about their relevant income in the new employment to the Department or to any other person that the Department may specify.
- (2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—
- (a) inform the person’s employer in the other new employment, and any other person that the Department may specify, that the old service pension is payable; and
  - (b) where requested, provide any information about their relevant income in the new employment to the Department or to any other person that the Department may specify.
- (3) In this regulation “relevant income” has the same meaning as in regulation 244.]

#### Textual Amendments

- F617** [Reg. 242](#) substituted (with effect in accordance with [reg. 1\(3\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\)](#), [regs. 1\(2\)](#), **76** (with [reg. 89](#))

#### Reduction of pension

- 243.**—(1) If the condition in paragraph (2) is met, the amount of the old service pension for any scheme year is reduced.
- (2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed pensioner's previous earnings.

(3) The amount of the reduction under paragraph (1) is equal to that excess but cannot exceed the enhancement amount.

(4) For the meaning of “relevant income” and “enhancement amount” see regulation 244.

(5) For the meaning of “previous earnings” see regulation 245.

(6) If the employed pensioner holds the new employment for only part of any scheme year, this regulation applies as if—

(a) the reference in paragraph (2) to the employed pensioner's relevant income were a reference to the appropriate proportion of that income, and

(b) the reference in that paragraph to the employed pensioner's previous earnings were a reference to the appropriate proportion of those earnings.

(7) In paragraph (6) “the appropriate proportion” means the same proportion as the period during which the new employment is held bears to the whole scheme year.

(8) If the member has a guaranteed minimum under section 10 of the 1993 Act in relation to the old service pension, nothing in this regulation requires the reduction of the old service pension below the amount of the member's guaranteed minimum in relation to it.

### Meaning of “relevant income”

**244.**—(1) The employed pensioner's relevant income for a scheme year is the aggregate of—

(a) the amount of pensionable earnings received by the employed pensioner during that year from the new employment (assuming, in any case where the employed pensioner is not an active member of [<sup>F618</sup>this Section of] the Scheme in the new employment, that the employed pensioner is such a member), and

(b) the enhancement amount in relation to the old service pension.

(2) The enhancement amount, in relation to an old service pension, is the difference between—

(a) the amount of that pension for that year, and

(b) the amount that that pension would have been had it been payable under regulation 179 (early payment of pensions with actuarial reduction).

(3) If the old service pension is payable under regulation 182 or 184 (ill-health pensions) to an employed pensioner who had not reached the age of 55 at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)—

(a) the fact that entitlement to a pension under regulation 179 depends on reaching that age is ignored, but

(b) the employed person's actual age at the relevant time is taken into account in determining the reduction to be made under regulation 179(2).

(4) If the old service pension is a tier 2 ill-health pension, for the purposes of paragraph (2)(b), only the employed pensioner's actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 179.

(5) If the employed pensioner exercised the option under regulation 185 (general option to exchange part of pension for lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.

[<sup>F619</sup>(5A) The resulting reduction in the pension is taken into account for the purposes of this regulation if the employed pensioner—

(a) exercised the option under regulation 189 (Election to allocate pension) in relation to the old service pension; or

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(b) is a 2008 Section Optant who was entitled to a lump sum under regulation 260K in relation to the old service pension.]

(6) References in this regulation to the amount of a pension for any scheme year are to its amount for that year after any increases payable under the Pensions (Increase) Act (Northern Ireland) 1971 in respect of that pension, including the increases that would have been payable in respect of any amount not paid because of a reduction ignored under paragraph (5).

#### Textual Amendments

**F618** Words in [reg. 244\(1\)\(a\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [reg. 1\(2\)](#), **Sch. 2 Pt. 1**

**F619** [Reg. 244\(5A\)](#) inserted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 48**, [reg. 1\(2\)](#)

#### Meaning of “previous earnings”: general

**245.**—(1) For the purposes of this Chapter an employed pensioner's previous earnings is the average of the annual amounts of the member's earnings in respect of practitioner service (or service which is treated as practitioner service) uprated to the date of entitlement to the pension in accordance with regulation 176(4)(b) and adjusted in each scheme year for inflation.

(2) The reference in paragraph (1) to adjusting that amount in each scheme year for inflation is to increasing it by the same amount as that by which an annual pension equal to that amount would have been increased under the Pensions (Increase) Act (Northern Ireland) 1971 at 6th April in that scheme year if—

- (a) that pension was eligible to be so increased, and
- (b) the beginning date for that pension were the same as the beginning date for the old service pension.

(3) In this regulation “the beginning date”, in relation to a pension, means the date on which it is treated as beginning for the purposes of section 8(2) of the Pensions (Increase) Act (Northern Ireland) 1971.

#### Employed pensioners with more than one pension

**246.**—(1) This regulation provides for the application of this Chapter where a person is entitled to more than one old service pension falling within regulation 241(2)(c) in any scheme year.

(2) In regulation 243—

- (a) for paragraphs (1) and (2) substitute—

“(1) If the condition in paragraph (2) is met, the amount of the old service pensions for any scheme year is reduced.

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed pensioner's previous earnings for all the old employments.

(3) The amount of the reduction under paragraph (1) in the case of each of the pensions is equal to the same proportion of that excess as the amount of the pension for the scheme year before the reduction bears to the sum of the pensions for that year before the reduction”.

(2A) In regulation 244(1)(b) for “the old service pension” substitute “ all the old service pensions ”.

(3) Regulation 247 applies as if references to the old service pension were references to all those pensions.

### **Provisional reductions and later adjustments**

**247.**—(1) If it appears to the Department that the condition in regulation 243(2) will be met in any scheme year in respect of the old service pension for that year, the Department may reduce the amount of that pension paid at any time in the scheme year.

(2) Where the old service pension for a scheme year is being reduced under this Chapter, the Department must review the amount of the reduction—

(a) at the end of the scheme year, and

(b) at any time during the scheme year if it appears to the Department that—

(i) the amount of the reduction made for the year is or may become incorrect, or

(ii) no reduction should be made.

(3) If at any time during the scheme year it so appears, the Department must make such adjustments, whether by altering the amount of the reduction or by repaying to the employed pensioner any amount that should not have been deducted from the pension, as appear to the Department to be required.

(4) If at the end of the scheme year it is apparent that—

(a) the reduction in the old service pension for the year was excessive, or

(b) no such reduction should have been made,

the Department must repay the amount due to the employed pensioner.

(5) If at the end of the scheme year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 243 was not made, the employed pensioner must repay the excess to the Department.

(6) Paragraph (5) does not affect the Department's right to recover a payment or overpayment in any case where the Department considers it appropriate to do so.

## **CHAPTER 9**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

#### *Scheme administrator*

#### **Appointment of Scheme administrator**

**248.** For the purposes of this Part and of Part 4 of the Finance Act 2004, the Scheme administrator is the Department.

#### *Claims*

#### **Claims for benefits**

<sup>F620</sup>**249.**—(1) A person claiming to be entitled to benefits under this Part (“the claimant”) shall make a claim in writing to the Department.



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(2) Pursuant to such a claim, the claimant, and where appropriate, the member's employing authority (including any previous employing authority of the member) shall provide such—

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in their possession relating to the claimant or member,

as the Department may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Department so provides.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Department from time to time.

(5) In this regulation, "electronic communication" has the same meaning as in section 15(1) of the Electronic Communications Act 2000.]

#### Textual Amendments

**F620** Reg. 249 substituted (with effect in accordance with reg. 1(3) of the amending Rule) by [The Health and Personal Social Services \(Superannuation\), Health and Social Care \(Pension Scheme\) and Health and Personal Social Services \(Injury Benefits\) \(Amendment and Transitional Provisions\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/65\), regs. 1\(2\), 77](#) (with reg. 89)

#### *Power to extend time limits*

#### **Power to extend time limits**

**250.** The Department may extend any time limit mentioned in this Part as it applies in any particular case.

#### *Beneficiaries who are incapable of looking after their affairs*

#### **Beneficiaries who are incapable of looking after their affairs**

**251.**—(1) In the case of a beneficiary who, in the opinion of the Department, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Department may—

- (a) use any amount due to the beneficiary under the Scheme for the beneficiary's benefit, or
- (b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Department from any obligation under the Scheme in respect of the amount.

Commutation of small pensions

Commutation of small pensions

252.—(1) The Department may pay any person entitled to a pension under [F621this Section of] the Scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under [F621this Section of] the Scheme on the person's death apart from the payment if the conditions specified in paragraph (2) are met.

(2) The conditions are that the payment complies with the following requirements (so far as they apply)—

- (a) the contracting-out requirements,
(b) the preservation requirements,
(c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations (Northern Ireland) 1997 M73,
F622(d) . . . . .
(e) the lump sum rule (see, in particular, paragraph 7 of Schedule 29 to the Finance Act 2004: trivial commutation lump sums for the purposes of Part 4 of that Act), F623 ...
(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)F624; and
(g) Regulation 12 of the Registered Pension Schemes (Authorised Payments) Regulations 2009 (payment by larger pension schemes).]

(3) The lump sum must be calculated by the Department in accordance with advice from the Scheme actuary.

(4) The payment of a lump sum under this regulation discharges all liabilities of the Department in respect of the pension in question and of any other such benefits as mentioned in paragraph (1).

Textual Amendments
F621 Words in reg. 252(1) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), Sch. 2 Pt. 1
F622 Reg. 252(2)(d) omitted (with effect in accordance with reg. 1(3)(k) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), 76
F623 Word in reg. 252(2)(e) omitted (14.3.2012) by virtue of The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(2), 28(2)
F624 Reg. 252(2)(g) and word added (14.3.2012) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2012 (S.R. 2012/42), regs. 1(2), 28(3)
Marginal Citations
M73 S.R. 1997 No. 153

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### *Reduction in and forfeiture of benefits*

#### **Reduction in benefits in cases where loss caused by member's crime, negligence or fraud**

**253.**—(1) If, as a result of a member's criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member's employment relationship with the member's employer, the Department—

- (a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss, or
- (b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.

(2) Paragraph (1) does not apply so far as the pension or other benefit—

- (a) is a guaranteed minimum pension or safeguarded rights which are derived from rights to such a pension, or
- (b) arise out of a transfer payment.

(3) If the Department proposes to exercise the power under paragraph (1), the Department must give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction may be made under paragraph (1) until the member's obligation to make good the loss has become enforceable—

- (a) under the order of a competent court, or
- (b) in consequence of an award of an arbitrator.

(5) If the loss is suffered by an employing authority, the amount of any reduction under paragraph (1) must be paid to that authority.

#### **Forfeiture of rights to benefits**

**254.**—(1) The Department may direct, subject to paragraph (7), that all or part of any rights to benefits or other amounts payable to or in respect of a member under these Regulations be forfeited if—

- (a) the member is convicted of any of the offences specified in paragraph (2), and
- (b) the offence was committed before the benefit or other amount becomes payable.

(2) The offences are—

- (a) an offence in connection with employment that qualifies the member to belong to [F625this Section of] the Scheme, in respect of which the Secretary of State has issued a forfeiture certificate,
- (b) one or more offences under the Official Secrets Acts 1911 to 1989 for which the member has been sentenced on the same occasion to—
  - (i) a term of imprisonment of at least 10 years, or
  - (ii) two or more consecutive terms amounting in the aggregate to at least 10 years.

(3) In paragraph (2)(a) “forfeiture certificate” means a certificate that the Secretary of State is satisfied that the offence—

- (a) has been gravely injurious to the State, or
- (b) is liable to lead to serious loss of confidence in the public service.

(4) The Department may direct, subject to paragraph (7), that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where the benefits or amounts are payable

to a person to whom paragraph (5) applies who has been convicted of the murder or manslaughter of that member or of any other offence of which unlawful killing of that member is an element.

(5) This paragraph applies to a person who is—

- (a) the member's widow, widower, nominated partner or surviving civil partner,
- (b) a dependant of the member,
- (c) a person not falling within sub-paragraph (a) or (b) who is specified in a notice given under regulation 214(3) [<sup>F626</sup>or (10)] , or
- (d) a person to whom such benefits or amounts are payable under the member's will or on the member's intestacy.

(6) Subject to paragraph (7), a guaranteed minimum pension or safeguarded rights which are derived from rights to such pensions may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2)(b).

(7) This regulation is without prejudice to section 2 of the Forfeiture Act 1870 <sup>M74</sup> (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 9(2) of the Criminal Justice Act (Northern Ireland) 1953 <sup>M75</sup>).

#### Textual Amendments

**F625** Words in reg. 254(2)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

**F626** Words in reg. 254(5)(c) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **78** (with reg. 89)

#### Marginal Citations

**M74** 1870 c. 32

**M75** 1953 c. 14 (N.I.)

### *Provisions about tax*

#### **Deduction of tax**

**255.**—(1) The Department may deduct from any payment under the Scheme any tax which is required to be paid in respect of it.

(2) Without prejudice to the generality of paragraph (1), if a person becoming entitled to a benefit under this Part—

- (a) is a benefit crystallisation event under section 216 of the Finance Act 2004, and
- (b) a lifetime allowance charge under section 214 of that Act arises when that event occurs,

the tax charged must be paid by the Scheme administrator.

(3) Paragraph (4) applies if—

- (a) a member has given the Scheme administrator a statement in accordance with regulation 215 (tax treatment under the Finance Act 2004 of lump sums payable on pensioners' death) that a lump sum payable under that regulation is to be treated as a

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pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to that Act, and

(b) has not withdrawn that statement.

(4) Without prejudice to the generality of paragraph (1), when the lump sum is paid, the Scheme administrator may deduct the tax payable under section 206 of the Finance Act 2004 (special lump sum death benefits charge) from the lump sum.

#### *Interest on delayed payments*

### **Interest on late payment of benefits and refunds of contributions**

**256.**—(1) This regulation applies if the whole or part of an amount to which this regulation applies is not paid by the end of the period of one month beginning with the due date.

(2) This regulation applies to any amount payable by way of a pension, lump sum or refund of contributions under [<sup>F627</sup>this Section of] the Scheme (other than any amount due under regulation 164 or 165 or interim [<sup>F628</sup>or substitute] award).

[<sup>F629</sup>(3) The Department must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Department is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.]

(4) The interest on the unpaid amount is calculated at the base rate on a day to day basis from the due date for the amount to the date of its payment and compounded with three-monthly rests.

(5) For the purposes of this regulation, except where paragraph (6) applies, “due date”, in relation to an unpaid amount [<sup>F630</sup>(other than an unpaid amount in respect of an interim or substitute award)] , means—

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 4 [<sup>F631</sup>or a lump sum under regulation 260K] (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 [<sup>F632</sup>, other than a pension payable under regulation 213A (Pension payable when member dies on or after reaching age 75)] ,
- (c) in the case of an amount in respect of a lump sum under Chapter 5 (death benefits) that is payable to the member's personal representatives, the earlier of—
  - (i) the date on which probate or letters of administration were produced to the Department, and
  - (ii) the date on which the Department was satisfied that the lump sum may be paid as provided in regulation 214(9), and
- (d) in the case of an amount in respect of any other lump sum under that Chapter, the day after the date of the member's death, and
- (e) in the case of an amount in respect of a refund of contributions, the day after that on which the Department received from Her Majesty's Commissioners of Revenue and Customs the information required for the purposes of calculating the amount to be subtracted under regulation 175(3) or (4) [<sup>F633</sup>; and
- (f) in the case of an amount in respect of a pension under regulation 213A that is payable to—
  - (f) in the case of an amount in respect of a pension under regulation 213A that is payable to—

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- (i) the member's personal representatives, the date on which probate or letters of administration were produced to the Department, and
- (ii) any person or body to whom the pension has been assigned by the member's personal representatives, the date on which the notice under regulation 214(10) was received by the Department, and
- (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member's death.]

[<sup>F634</sup>(6) The due date for an unpaid amount—

- (a) referred to in paragraph (5) in respect of which the Department was not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;
- (b) in respect of an interim or substitute award,

shall be the first day on which the Department was in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.]

(7) In this regulation, “[<sup>F635</sup>interim or substitute award]” means—

- (a) any amount paid by way of an interim payment calculated by reference to an expected benefit under [<sup>F636</sup>this Section of] the Scheme pending final calculation of the full value of that benefit, <sup>F637</sup> ...
- (b) any amount paid that increases the amount of an earlier payment due to a backdated or later increase in pensionable pay[<sup>F638</sup>; and
- (c) any amount paid that increases the amount of an earlier payment due to the payment of a tier 2 ill-health pension under regulation 182 paid to a member in substitution for a tier 1 ill-health pension under that regulation following a determination by the Department under regulation 183.]

### Textual Amendments

- F627** Words in reg. 256(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), reg. 1(2), **Sch. 2 Pt. 1**
- F628** Words in reg. 256(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **77(2)**
- F629** Reg. 256(3) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **77(3)**
- F630** Words in reg. 256(5) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **77(4)**
- F631** Words in reg. 256(5)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **95**

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- F632** Words in reg. 256(5)(b) inserted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **79(2)** (with reg. 89)
- F633** Reg. 256(5)(f) and word added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **79(3)** (with reg. 89)
- F634** Reg. 256(6) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **77(5)**
- F635** Words in reg. 256(7) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **77(6)(a)**
- F636** Words in reg. 256(7)(a) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**
- F637** Word in reg. 256(7)(a) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **77(6)(b)**
- F638** Reg. 256(7)(c) and word added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme and Injury Benefits) and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2009 (S.R. 2009/188), regs. 1(2), **77(6)(c)**

### *Determinations*

#### **Determination of questions**

**257.**—(1) Except as otherwise provided by this Part, any question arising under the Scheme is to be determined by the Department.

(2) Any such disagreement as is referred to in Article 50 of the 1995 Order (resolution of disputes) must be resolved by the Department in accordance with any arrangements applicable under that Article.

### *General prohibition on unauthorised payments*

#### **General prohibition on unauthorised payments**

**258.** Nothing in these regulations requires or authorises the making of any payment, which, if made, would be an unauthorised payment for the purposes of Part 4 of the Finance Act 2004 (see section 160(5) of that Act).



### *Prohibition on assignment or charging of benefits*

#### **Prohibition on assignment or charging of benefits**

**259.**—(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under [<sup>F639</sup>this Section of] the Scheme is void.

(2) On the bankruptcy of any person entitled to a benefit under [<sup>F639</sup>this Section of] the Scheme, no part of the benefit may be paid to the person's trustee in bankruptcy or other person acting on behalf of the creditors, except in accordance with an order under Article 280 or 283 of the Insolvency (Northern Ireland) Order 1989 <sup>M76</sup> (income payments orders).

#### **Textual Amendments**

**F639** Words in reg. 259(1)(2) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 1**

#### **Marginal Citations**

**M76** S.I. 1989/2405 (N.I. 19)

### *Record keeping and contribution estimates*

#### **[<sup>F640</sup>E]Employing authority and certain member record keeping and contribution estimates**

**260.**—(1) As regards a principal medical practitioner, in respect of each scheme year, the member shall provide each relevant host Board with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(2) As regards an assistant medical practitioner or a locum practitioner, in respect of each scheme year, the member shall provide each relevant host Board with a certificate of their pensionable earnings based on—

- (a) the payments they receive from employing authorities for practitioner services; and
- (b) the return that member has made to Her Majesty's Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty's Revenue and Customs.

(3) As regards a principal dental practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their [<sup>F641</sup>pensionable] earnings based on—

- (a) the notice of [<sup>F641</sup>pensionable] earnings referred to in regulation 148; and
- (b) their [<sup>F641</sup>pensionable] earnings as a principal dental practitioner from all other principal dental practitioner sources,



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no later than 6 months after the end of that scheme year.

(4) As regards an assistant dental practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their [<sup>F641</sup>pensionable] earnings based on—

- (a) the payments they receive from employing authorities for practitioner services; and
- (b) their [<sup>F641</sup>pensionable] earnings as an assistant dental practitioner from all other assistant dental practitioner sources,

no later than 6 months after the end of that scheme year.

[<sup>F642</sup>(5) In respect of each scheme year, a GMS practice or an APMS contractor shall provide the Department with a statement of estimated pensionable earnings in respect of any—

- (a) non-GP provider that is a GMS practice or an APMS contractor who assists in the provision of HSC services provided by that GMS practice or APMS contractor;
- (b) principal medical practitioner who performs medical services as, or on behalf of, the practice or contractor;
- (c) assistant medical practitioner employed by the practice or contractor.

(6) In respect of each scheme year, each employing authority shall, in respect of any of the person's referred to in paragraph (5)(a) to (c), provide the Department with an end-of-year statement of—

- (a) pensionable earnings;
- (b) contributions to this Section of the Scheme made under regulation 161 (Members' contribution rate);
- (c) contributions to this Section of the Scheme made under regulation 162 (Contributions by employing authorities: general); and
- (d) any pensionable earnings deemed in accordance with regulation 144 (Pensionable earnings-breaks in service),

in respect of any of the persons referred to in paragraph (5)(a) to (c).

(7) The Department shall be provided with—

- (a) the statement referred to in paragraph (5) at least 1 month before the beginning of that scheme year;
- (b) the statement referred to in paragraph (6) no later than 3 months after the end of that scheme year.

(8) All employing authorities must, for each scheme year—

- (a) provide the Department with a statement of estimated total contributions due to this Section of the Scheme under regulation 160 (Contributions by members) and 162 (Contributions by employing authorities: general); and
- (b) maintain, in a manner approved by Department from time to time, the records of contributions to this Section of the Scheme made under regulations 160 and 161.

(9) The statement referred to in paragraph (8)(a) must be provided to the Department no later than 2 months after the end of each scheme year and, except where the Department waives such requirement, an employing authority must provide the Department with a statement of contributions to this Section of the Scheme recorded in accordance with paragraph (8)(b) no later than 2 months after the end of each scheme year.

(10) Subject to paragraphs (11) and (12), if, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

(11) If, in respect of a scheme year, the employing authority of a practitioner or non-GP provider member is in possession of a figure representing all or part of that member's pensionable earnings for that year, the Department may treat that figure as the amount of that member's pensionable earnings for that year where—

- (a) that member has failed to comply with the requirements of whichever of paragraphs (1) to (4), applies to them; and
- (b) a benefit in respect of such services is payable to, or in respect of that member, under these Regulations.

(12) If, in respect of a scheme year, a practitioner or non-GP provider—

- (a) dies without complying with the requirements of whichever of paragraphs (1) to (4) applies to them; or
- (b) is, in the opinion of the Department, unable to look after their own affairs by reason of illness or lack of capacity,

the Department may require that practitioner or non-GP provider's personal representatives or person (or person's) duly authorised to act on the member's behalf to provide the relevant certificate or statement within the period specified in paragraph (13).

(13) The period is—

- (a) that referred to in whichever of paragraphs (1) to (4) was or is applicable to them
- (b) such other period as the Department permits.

(14) A host Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Department a copy of the records that the host Board maintains in respect of practitioners under regulation 164(17)(b) (Payment of contributions).

(15) The certificates and statements referred to in this regulation—

- (a) shall be in such form as the Department shall from time to time require;
- (b) may be provided to the Department in such manner as the Department may from time to time permit.

(16) A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment or disturbance in the functioning of his mind or brain]]

#### Textual Amendments

- F640** Reg. 260 substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme and Injury Benefits\) and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/188\)](#), regs. 1(2), **78**
- F641** Word in reg. 260(3)(4) substituted (14.3.2012) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), regs. 1(2), **30(2)**
- F642** Reg. 260(5)-(16) substituted for reg. (5)-(15) (14.3.2012) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/42\)](#), regs. 1(2), **30(3)**

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## [<sup>F643</sup>CHAPTER 10

### Section 2008 Optants

#### Textual Amendments

**F643** Pt. 3 c. 10 added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **96**

#### Application of Chapter 10 of this Part

##### 260A

(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the Scheme on the basis set out in this Chapter, including persons who—

- (a) return to HSC practitioner service in respect of which there is a liability to pay contributions to the Scheme in accordance with regulation 10 of the 1995 Regulations (as modified by paragraph 10 of Schedule 2 to those Regulations) (Contributions by members) within a period of less than 5 years beginning with the day on which they last left such service (whether or not that period includes 1st October 2009); <sup>F644</sup> ...
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation 7(3) of the 1995 Regulations (Restrictions on membership).

[ are pensioner members of the 1995 Section in respect of a pension payable under <sup>F645</sup>(c) regulation 14 or 14A of the 1995 Regulations (which deal with an early retirement pension on the grounds of redundancy and an early retirement pension on termination of employment by employing authority, respectively).]

This Chapter does not apply to person if—

- (i) that person is an active member of the 1995 Section by virtue of regulation 13(11) of the 1995 Regulations (Early retirement pension (ill-health)), or
- (ii) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(2) In these regulations a member of this Section of the Scheme to whom this Chapter applies is referred to as a “2008 Section Optant”.

#### Textual Amendments

**F644** Word in [reg. 260A\(1\)](#) omitted (with effect in accordance with reg. 1(4)(c) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 49(a)**, reg. 1(2)

**F645** [Reg. 260A\(1\)\(c\)](#) inserted (with effect in accordance with reg. 1(4)(c) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **Pt. 3 reg. 49(b)**, reg. 1(2)

## **Options for 1995 Section members to join this Section of the Scheme under Chapter 10 of this Part**

### **260B**

- (1) A person who by virtue of that person's practitioner service—
- (a) was an active member of the 1995 Section—
    - (i) on, or after, 1st October 2009, and
    - (ii) on the day that person's option to join this Section of the Scheme was received by the Department; and
  - (b) would be eligible to join this Section of the Scheme if that person met the condition in regulation 153(3)(a) (which requires that the person's practitioner service began on or after 1st April 2008),

may join this Section of the Scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the Scheme if that person opts to do so.

- (3) The option may only be exercised by giving notice in writing to the Department—
- (a) in such form as the Department requires; and
  - (b) before the date the Department specifies for that purpose in the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme issued to that person ("the comparative statement").

This is subject to paragraphs (4) and (9) and regulation 260T.

- (4) For the purpose of paragraph (3)—
- (a) the date specified by the Department in the comparative statement shall be a date that is at least four months later than the comparative statement issue date; and
  - (b) the notice shall be—
    - (i) irrevocable, and
    - (ii) treated as having been given on the date on which it is received by the Department.

(5) The option shall be effective from the first day of the member's superannuable service in the 1995 Section falling on or after 1st April 2008, and—

- (a) the person shall be treated as if that person had been a member of this Section of the Scheme from that date;
- (b) the member's service and superannuable earnings both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section shall count under this Section of the Scheme only to the extent that it would have counted had the member been an active member of this Section of the Scheme from that date.

This is subject to paragraph (12).

(6) If contributions due from the member under Chapter 3 of this Part in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member's pensionable earnings in such manner and at such rate as the Department requires.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the Scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Department may extend the time limit in paragraph (3) if the Department considers that the person has not had a reasonable opportunity to consider whether to exercise the option.

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(9) The Department may accept an option to join the 2008 Section that is received after the person ceases to be an active member of the 1995 Section if [<sup>F646</sup>either paragraph (9A) applies to that person or that person satisfies all of the following] —

- (a) a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme was issued to the person whilst that person was an active member of the 1995 Section;
- (b) but for the exercise of the option the person would otherwise become entitled to the immediate payment of benefits under Part III of the 1995 Section (as modified by paragraphs 11 and 12 of Schedule 2 to the 1995 Regulations);
- (c) the person has provided the Department with a notice in writing in such form as the Department may require that benefits are not to be paid from the 1995 Section and has not revoked that notice; and
- (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.

[<sup>F647</sup>(9A) This paragraph applies to a person who—

- (a) has ceased to pay contributions in accordance with paragraph (3) or paragraph (4) of regulation 10 of the 1995 Regulations (Contributions by members);
- (b) is continuing in HSC employment; and
- (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.]

(10) A person may revoke a notice given for the purposes of sub-paragraph (9)(c)—

- (a) at any time;
- (b) in writing on the form provided by the Department for that purpose.

(11) A person who has revoked a notice in accordance with paragraph (10) may not provide a further notice under paragraph (9).

(12) A person exercising an option under this regulation who is entitled to a pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) may count as qualifying service for the purpose of this Section of the Scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count under regulation 5 of the 1995 Regulations (Meaning of qualifying service) in determining their entitlement to that pension.

(13) For the purposes of paragraphs [<sup>F648</sup>(4), (9) and (9A)] the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent (whether by electronic communication or otherwise)—

- (a) to the person; or
- (b) to the person's employing authority.

(14) Where paragraph 13(b) applies the person must have a period equal to at least three months ending on the date specified by the Department in accordance with paragraph (4)(a) in which to opt to join this Section of the Scheme.

This is subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8).

#### Textual Amendments

**F646** Words in [reg. 260B\(9\)](#) inserted (with effect in accordance with [reg. 1\(4\)\(d\)](#) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional](#)

Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 50(2)**, reg. 1(2)

**F647** Reg. 260B(9A) inserted (with effect in accordance with reg. 1(4)(d) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 50(3)**, reg. 1(2)

**F648** Words in reg. 260B(13) substituted (with effect in accordance with reg. 1(4)(d) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions), Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/286), **Pt. 3 reg. 50(4)**, reg. 1(2)

### *Transfer of service and pensionable earnings from the 1995 Section*

## **Service and pensionable earnings credited from the 1995 Section**

### **260C**

(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the Scheme, and
- (b) is not entitled to a pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement),

is entitled to count the following service under this Section of the Scheme.

(2) The member may count as qualifying service a period equal in length to the period of qualifying service up to, and including, 31st March 2008 which the member was entitled to count under the 1995 Section (but not exceeding 45 years).

(3) The pensionable earnings and service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count is an amount equal to the amount of superannuable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation 4 of the 1995 Regulations (Meaning of superannuable service).

This is subject to paragraphs (9) and regulation 260K.

(4) The pensionable earnings and service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count is an amount equal to the amount of superannuable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation 4 of the 1995 Regulations multiplied by the factor specified in paragraph (8) applicable to the case.

This is subject to paragraphs (5), (8), (9) and (10) and regulation 260K.

(5) In determining the amounts of superannuable earnings up to, and including, 31st March 2008 in paragraph (3) or (4), the Department shall have regard to—

- (a) the superannuable earnings for any scheme year recorded by the Optant's host Board;
- (b) the superannuable earnings for any scheme year certified by the Optant in accordance with paragraph 23 of Schedule 2 to the 1995 Regulations.

This is subject to paragraph (6).

(6) If, in respect of any particular scheme year, the superannuable earnings referred to in paragraph (5)(a) or (b) are not available, the Department shall determine the superannuable earnings for that scheme year and in doing so shall have regard to—

- (a) the contributions paid in accordance with regulation 10 of the 1995 Regulations (as modified by paragraph 10 of Schedule 2 to those Regulations) (Contributions by members) or regulation 160; or

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(b) the figure supplied by the host Board.

This is subject to paragraph (7).

(7) If—

(a) the Department has made a determination of superannuable earnings in accordance with paragraph (6); and

(b) the superannuable earnings referred to in paragraph (5) that were not available to the Department at the time of that determination, subsequently become available,

the Department shall revise that determination accordingly.

(8) The factor referred to in paragraph (4) is the factor specified by the Department for that purpose.

(9) For the purposes of paragraphs (3) and (4) the superannuable earnings for practitioner service which the 2008 Section Optant was entitled to count under regulation 4 of the 1995 Regulations shall not include any superannuable service the Optant was entitled to count under regulation 4(1) (e) of that Section.

(10) When a 2008 Section Optant becomes a member of this Section of the Scheme under this Part all rights in respect of that Optant under the 1995 Section are extinguished.

## **Treatment of Additional Pension**

### **260D**

(1) This regulation applies to a 2008 Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension (“OPAP”) under regulation 73A or 73C or whose employing authority had done so under regulation 73D of the 1995 Regulations (which deal with the purchase of additional pension by periodical contributions and lump sums).

(2) Where paragraph (1) applies, the amount of additional pension that will count under this Section of the Scheme shall be calculated in accordance with—

(a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation 73G of the 1995 Regulations (Effect of payment of additional contributions under this Part);

(b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation 73F of those Regulations (Cancellation and cessation of options under regulation 73A).

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 171 shall be equal to the amount of additional pension—

(a) purchased in the 1995 Section under regulation 73G of the 1995 Regulations where the person’s chosen birthday under the OPAP was 65;

(b) that would have been purchased in the 1995 Section under regulation 73G of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Department shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

Paragraph (3)(b) is subject to paragraph (9).

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 173 shall be equal to the amount of additional pension—

(a) purchased in the 1995 Section under regulation 73F of the 1995 Regulations, where the person’s chosen birthday under the OPAP was 65;

(b) that would have been purchased in the 1995 Section under regulation 73F of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount,

the Department shall have regard to the advice of the Scheme actuary, where the person's chosen birthday under the OPAP was 60.

Paragraph (4)(b) is subject to paragraph (9).

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section shall do so from the effective date specified in paragraph (5) of regulation 260B.

(6) This paragraph applies—

(a) to a person referred to in paragraph (1); and

(b) where at the effective date specified in paragraph (5) of regulation 260B—

(i) that person—

(aa) was making additional contributions in accordance with an OPAP exercised under regulation 73A of the 1995 Regulations; or

(bb) had applied to make, but had not yet begun making, additional contributions under regulation 73A of the 1995 Regulations; or

(cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation 73C of the 1995 Regulations, or

(ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation 73D of the 1995 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation 73A of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section of the Scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 165, 167 or 168 would apply in that case.

(8) Where paragraph (6) applies and the person's chosen birthday referred to in regulation 73A of the 1995 Regulations was 60, the OPAP referred to in that paragraph will apply in this Section of the Scheme—

(a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 165, 167 or 168 would apply in that case; and

(b) after adjustment, having regard to the advice of the Scheme actuary, so that—

(i) the amount of the additional pension purchased in this Section of the Scheme is the same as that which would have been purchased in the 1995 Section, but

(ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the Scheme, reduce or (where appropriate) cease to be payable.

This is subject to paragraph (9).

(9) If paragraph (3)(b), (4)(b) or (8) of this regulation applies and—

(a) the amount of the additional pension calculated in accordance with paragraph (3)(b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 165, 167 or 168; or

(b) the limit on the total increase in the member's pension referred to in regulation 165 will be exceeded by the amount of additional pension that counts in this Section of the Scheme in accordance with paragraph (8)(b)(i) notwithstanding any reduction in, or cessation of, additional contributions payable in accordance with paragraph (8)(b)(ii),

the total increase in the member's pension under this regulation, taken together with any other increase under regulations 165, 167 or 168—



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- (i) will be subject to the limit on the total increase in the member's pension described in regulation 165, 167 or 168, and
- (ii) the amount of additional pension that counts in this Section of the Scheme in accordance with paragraphs (2) to (8) that exceeds that limit will be converted to pensionable earnings for the purposes of regulation 143(10), and in determining the amount of such additional pension to be converted into pensionable earnings, the Department shall have regard to the advice of the Scheme actuary.

### **Treatment of Additional Service and pensionable earnings**

#### **260E**

(1) A 2008 Section Optant—

- (a) who becomes a member of this Section of the Scheme; and
- (b) is buying or has already bought a period of additional service that counts as superannuable service under regulation 4(1)(e) of the 1995 Section (Meaning of superannuable service),

will be able to count an additional amount of pensionable earnings for that superannuable service in this Section of the Scheme as described in whichever of paragraphs (5) or (6) apply to that Optant.

(2) The additional pensionable earnings referred to in paragraph (1) are—

- (a) any additional superannuable earnings bought under regulation 67 of the 1995 Regulations, as modified by paragraph 20(2) of Schedule 2 to those Regulations (Right to buy additional service) before the date that person's option to join this Section of the Scheme was received by the Department in accordance with regulation 260B; and
- (b) any additional superannuable earnings bought under regulation 22 of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984 (Purchase of added years of contributing service).

This is subject to paragraphs (3) and (4).

(3) The additional superannuable earnings referred to at paragraph (2)(a) will be calculated in accordance with—

- (a) paragraph (4) of regulation 67 of the 1995 Regulations, as modified by paragraph 20(2) or, as the case may be, paragraph 20(4) of Schedule 2 to those Regulations, in the case of an election that had ceased and was paid for in full by the date referred to paragraph (2)(a);
- (b) paragraphs (1), (4) and (5) (but not (6)) of regulation 73 of those Regulations (Part payment for additional service or unreduced retirement lump sum), in the case of an election that had ceased but had only partially been paid for at that date; or
- (c) paragraphs (1), (4) and (5) (but not (6)) of regulation 73 of those Regulations, in the case of an election that remained in force immediately before that date.

Paragraph (3)(c) is subject to paragraph (7).

(4) The additional superannuable earnings referred to at paragraph (2)(b) will be calculated in accordance with whichever of paragraph (3) or (4)(b) of regulation 22 of the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984 applies to the Optant.

(5) The additional pensionable earnings which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section of the Scheme is an amount equal to the amount of additional superannuable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or paragraph (4) applies.

(6) The additional pensionable earnings which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section of the Scheme are the pensionable earnings found by—

- (a) first taking the additional superannuable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies (“ASE”), and
  - (b) then multiplying ASE by the factor specified by the Department for that purpose.
- (7) Where a member was buying additional service by means of regular additional contributions immediately before the date referred to in paragraph (2)(a), the member's—
- (a) election to buy additional service will cease from that date; and
  - (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member's pensionable pay in accordance with regulation 260B(6) and (7).
- (8) For the purposes of calculating the Optant's benefits under this Section of the Scheme the additional pensionable earnings that the Optant is entitled to count under paragraph (5) or as the case may be paragraph (6) of this regulation will be added to the amount of pensionable earnings the member is entitled to count under—
- (a) regulation 260C(3), if the member is under age 60 on 1st October 2009; or
  - (b) regulation 260C(4), if the member is age 60 or over on that date.
- This is subject to regulation 260R.

## **Treatment of unreduced retirement lump sum**

### **260F**

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person's option to join this Section of the Scheme was received by the Department in accordance with regulation 260B, had made an election under regulation 68 of the 1995 Regulations (Right to buy an unreduced lump sum) to—

- (a) purchase an unreduced retirement lump sum for service before 25th March 1972; or
- (b) buy additional survivor's pension for service before 6th April 1988,

which satisfies any of the conditions in paragraph (2).

(2) Those conditions are that the election—

- (a) was paid for in full by the date referred to in paragraph (1);
- (b) ceased before the date referred to in paragraph (1), but before completion of the additional contributions payable;
- (c) was payable by additional contributions and remained in force immediately before the date referred to in paragraph (1); or
- (d) was payable by deduction from the member's retirement lump sum.

(3) If paragraph (1) applies, the election referred to in that paragraph will cease to be effective from 1st April 2008 and—

- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 260B(6) and (7);
- (b) any liability to pay additional contributions will cease from, and including 1st April 2008; and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

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## **Treatment of 2008 Section Optants to whom regulation 52(3) of the 1995 Regulations applied immediately before 1st April 2008**

### **260G**

- (1) This regulation applies to a 2008 Section Optant—
- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 4 and 5 of this Part; and
  - (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation 52(3) of the 1995 Regulations (Early leavers returning to superannuable employment).
- (2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—
- (a) as a deferred member of this Section of the Scheme in respect of any period of practitioner service and pensionable earnings credited to that Optant under regulation 260C that relates to one or more periods of practitioner service in the 1995 Section that occurred before a break of 12 months or more in such service (“an earlier service credit”); and
  - (b) as if the Optant became an active member for the first time on the first day of any period of practitioner service and pensionable earnings credited to that Optant under regulation 260C that relates to a period of superannuable service in the 1995 Section that occurred after a break of 12 months or more in such service.

This is subject to paragraph (3).

- (3) The Optant’s benefits in respect of an earlier service credit mentioned in paragraph (2)(a) shall be calculated—
- (a) separately; and
  - (b) by reference to the member’s uprated earnings calculated in accordance with paragraph 11 of Schedule 2 to the 1995 Regulations (Normal retirement pension) in respect of that particular period.

This is subject to regulation 182(5)(b)(ii).

## **Pension debit members**

### **260H**

- (1) This regulation applies where, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member.
- (2) The amount of the reduction to be made to the Optant’s pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant’s pension under the 1995 Section calculated in accordance with Article 28 of the 1999 Order (Reduction under pension sharing order following divorce or nullity of marriage) adjusted by the factor referred to in paragraph (3).
- (3) The factor referred to in paragraph (2) is the factor specified by the Department for that purpose.
- (4) The Department may, after taking advice from the Scheme actuary, make such modifications to—
- (a) the Optant’s rights; and
  - (b) as to the form of the Optant’s benefits,
- as the Department considers necessary for the purpose specified in paragraph (5).

(5) If in the opinion of the Department, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant's rights are subject for some or all of the benefits under this Section of the Scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Department may modify those benefits as described in paragraph (4).

### **Pensionable earnings credited under regulations 260C and 260E to be treated as capped Optant pensionable earnings**

#### **260I**

(1) This regulation applies for the purpose of determining the amount of an Optant's pensionable earnings (if any) that fall to be treated as capped Optant pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the Optant under this Part.

(2) In paragraph (1) "capped Optant pensionable earnings" means the amount of pensionable earnings that the Optant is entitled to count under regulations 260C and 260E in respect of an amount of capped superannuable earnings for service in the 1995 Section up to, and including, 31st March 2008.

(3) For the purposes of paragraph (2), the Optant's pensionable earnings were capped superannuable earnings in respect of service in the 1995 Section so far as—

- (a) in the case of superannuable earnings in respect of service before 6th April 2006,—
  - (i) the Optant was an active member of the 1995 Section, and
  - (ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to superannuable earnings limited in each tax year to the permitted maximum for that year within the meaning of Section 590C(2) of the Income and Corporation Taxes Act 1988; or
- (b) in the case of superannuable earnings in respect of service on or after 6th April 2006,—
  - (i) the Optant was an active member of the 1995 Section, and
  - (ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to superannuable earnings limited in each tax year to an amount calculated in the same manner as the permitted maximum under Section 590C(2) of the Income and Corporation Taxes Act 1988 was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3), it does not matter whether, apart from the application of the limit referred to in that paragraph, the Optant's earnings in any tax year would have exceeded the amount of the limit.

#### *Miscellaneous provisions*

### **Transfers in: transitional provision**

#### **260J**

- (1) This regulation applies to a 2008 Section Optant who—
  - (a) commenced a period of superannuable service as a practitioner member in the 1995 Section on, or after, 1st April 2008; and
  - (b) within one year of the commencement of that service makes an application to transfer accrued rights to benefits to the 1995 Section under regulation 60 of the 1995 Regulations (Member's right to transfer accrued rights to benefits to this Section of the Scheme).
- (2) If—

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- (a) the Department accepts the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation 60(4) of the 1995 Regulations; and
- (b) that payment is received by the Department before the day on which the person's option to join this Section of the Scheme is received,

the increase to pensionable earnings that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).

(3) If the transfer payment in respect of an application referred to in paragraph (1) is received by the Department on, or after, the day on which the person's option to join this Section of the Scheme is received—

- (a) the Department may accept that payment under this Section of the Scheme—
  - (i) without requiring the Optant to make an application under regulation 227, and
  - (ii) subject to such other conditions as the Department may require; and
- (b) if the Department accepts the payment, the increase to pensionable earnings that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of that Optant under this Section of the Scheme will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).

(4) The increase to pensionable earnings that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, the Optant under this Section of the Scheme—

- (a) will be calculated in accordance with regulation 230;
- (b) the financial year in which the member joined this Section of the Scheme for the purposes of regulation 230(2)(a) will be the financial year in which the Optant's superannuable service referred to in paragraph (1) commenced;
- (c) the starting day for the purpose of regulations 230(2)(b) and 230(4) will be the day that the member's superannuable service referred to in paragraph (1) commenced.

This is subject to paragraph (6).

(5) The period of pensionable service that the Optant is entitled to count for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 139 will be the relevant period calculated in accordance with regulation 229.

(6) If the transfer value payment is accepted by the Department under the public sector transfer arrangements—

- (a) regulation 231 shall apply to the Optant in respect of the increase to pensionable earnings that the Optant is entitled to count under this regulation; and
- (b) the reference in regulation 231(2) to the increase to pensionable earnings that the member is entitled to count under regulation 229(2)(a) shall be read as a reference to the increase to pensionable earnings the Optant is entitled to count under paragraph (4).

### **Amount of pension and lump sum to be paid to a 2008 Section Optant**

#### **260K**

- (1) This regulation applies to a 2008 Section Optant who—
  - (a) is entitled to an annual pension under Chapter 4 of this Part, or
  - (b) is entitled to the payment of a transfer value under Chapter 6 of this Part in respect of the pension that has accrued to or, in respect of, that Optant under this Section of the Scheme.

- (2) In the case of a 2008 Section Optant referred to in paragraph (1)(a)—
- (a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation that apply to that Optant; and
  - (b) the annual amount of pension referred to in paragraph (1)(a) to which that Optant is entitled, shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.
- (3) In the case of a 2008 Section Optant referred to in paragraph (1)(b)—
- (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5); and
  - (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.
- (4) Except in a case to which paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).
- This is subject to paragraphs (13) and (15).
- (5) The amount of lump sum shall be determined by—
- (a) applying the formula—
$$3 \times 1.4\% \text{ of the member's Relevant Uprated Earnings}$$
- and
- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (6) In the case of an Optant—
- (a) who becomes entitled to an annual amount of pension payable under regulation 179; and
  - (b) on the day the Optant becomes entitled to that pension the Optant has not attained age 60,
- the amount of lump sum shall be determined as described in paragraph (7).
- (7) The amount of lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—
- (a) applying the formula—
$$3 \times (1.4\% \text{ of the member's Relevant Uprated Earnings} \times \text{Reduction Factor})$$
- and
- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (8) In the case of an Optant—
- (a) who becomes entitled to an annual amount of pension payable under regulation 180 for the first time; and
  - (b) on the day the Optant becomes entitled to that pension the Optant has not attained age 60,
- the amount of lump sum shall be determined as described in paragraph (9).
- (9) The amount of lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—
- (a) applying the formula—
$$3 \times (1.4\% \text{ of the member's Specified Uprated Earnings} \times \text{Reduction Factor})$$
- and

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(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(10) In the case of an Optant—

(a) who becomes entitled to an annual amount of pension payable under regulation 180 for the first time); and

(b) on the day the Optant becomes entitled to that pension the Optant has attained age 60,

the amount of lump sum shall be determined as described in paragraph (11).

(11) The amount of lump sum that is to be paid to an Optant referred to in paragraph (10) shall be calculated by—

(a) applying the formula—

$$3 \times (1.4\% \text{ of the member's Specified Up-rated Earnings})$$

and

(b) then rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(12) In the case of an Optant—

(a) who is a pensioner member as respects a pension payable under regulation 180 as described in paragraph (8)(a) of that regulation; and

(b) who—

(i) subsequently exercises an option under that regulation for the second or a final time, or

(ii) becomes entitled to any other pension under Chapter 4 of this Part in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of lump sum shall be determined by the Department after taking advice from the Scheme actuary.

(13) If, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member the amount of the lump sum determined under this regulation shall be reduced by the amount calculated under paragraph (14) (“the pension debit reduction”).

(14) The amount of the pension debit reduction referred to in paragraph (13) shall be calculated by—

(a) applying the formula—

$$3 \times (1995 \text{ Section Pension Debit} \times \text{Increase Factor})$$

and

(b) rounding up the amount found in sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(15) If any part of an Optant’s benefit under this Section of the Scheme falls to be calculated by reference to capped Optant pensionable earnings under regulation 260I the determinations in this regulation shall apply separately in respect of—

(a) the pension to which the Optant is entitled in respect of the pensionable earnings that falls to be calculated by reference to capped Optant pensionable earnings; and

(b) the pension to which the Optant is entitled in respect of the pensionable earnings that does not fall to be calculated by reference to capped Optant pensionable earnings.

(16) If the benefits of an Optant to whom this regulation applies are subject to the modifications provided for in Part 4—

- (a) the amount of—
    - (i) the lump sum referred to in paragraph (2)(a) and in regulation 136L(2)(a), and
    - (ii) the reduction in the annual amounts of pension referred to in paragraph (2)(b) and in regulation 136L(2)(b),will be calculated without regard to those modifications;
  - (b) if any pension included in the “reference amount” or, as the case may be, the “base amount” referred to in regulations 276(1) and 262 (respectively) and payable to a member under Part 4, will, on the member’s retirement, attract an immediate increase under the Pensions (Increase) Act (Northern Ireland) 1971;
  - (c) the amount of any lump sum referred to in sub-paragraph (a)(i) that is based on a pension that will attract an immediate increase under the Pensions (Increase) Act (Northern Ireland) 1971, will—
    - (i) be increased in like manner, and
    - (ii) give rise to a corresponding increase in the reduction to the corresponding annual amount of pension referred to in sub-paragraph (a)(ii); and
  - (d) the total of the amounts referred to in sub-paragraph (a)(i) and (a)(ii), together with any increases described in sub-paragraph (c), will apply to the “reference amount” or, as the case may be, the “base amount” referred to in regulations 276(1) and 262 (respectively) payable to a member under Part 4.
- (17) For the purposes of this regulation—
- “1995 Section Pension Debit” is the amount by which the Optant’s annual pension under the 1995 Regulations was to be reduced in accordance with Article 28 of the 1999 Order;
- “annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the Scheme apart from this regulation, together with any increases payable under the Pensions (Increase) Act (Northern Ireland) 1971, calculated as at the time payment would first be due;
- “Increase Factor” is the factor that would have applied to the 1995 Section Pension Debit for the purposes of Article 26 of the 1999 Order if the Optant had become entitled to a pension under the 1995 Regulations—
- (a) on the date that the Optant becomes entitled to a pension referred to in paragraph (1)(a); or
  - (b) on the day after the Optant’s last day of pensionable service if the Optant becomes entitled to the payment of a transfer value referred to in paragraph (1)(b);
- “Relevant Uprated Earnings” are the uprated earnings for the period of practitioner service (expressed in days) equal to the aggregate of—
- (a) the amount of uprated earnings for pensionable service that the Optant is entitled to count under regulation 260C; and
  - (b) the amount of additional pensionable earnings for additional service (if any) that the Optant is entitled to count under regulation 260E;
- “Reduction Factor” is the reduction factor that the Department, after taking advice from the Scheme Actuary, determines would have applied to that Optant’s lump sum under regulation 17(7)(b) of the 1995 Regulations (Lump sum on retirement) if that Optant had become entitled to a pension calculated under regulation 16 (Early retirement pension (with actuarial reduction)) of those Regulations on the day he became entitled to a pension under regulation 179 or, as the case may be, regulation 180;



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“Specified Uprated Earnings” is the amount of the Optant’s Relevant Uprated Earnings multiplied by the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 180(3)(a) (“the specified percentage”).

### **Nominations and notices accepted by the Department under the 1995 Regulations to apply under Chapter 5 of this Part of these Regulations**

#### **260L**

- (1) This regulation applies if—
  - (a) the Department has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 Section member; and
  - (b) on the day that the Department receives that person’s option to join this Section of the Scheme, that person has not revoked that nomination or notice.
- (2) The nominations and notices referred to in paragraph (1) are—
  - (a) a nomination made in accordance with regulation 22 of the 1995 Regulations (Payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations 18 to 21 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
  - (b) a notice provided for the purposes of paragraph (3)(a) of regulation 22 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations 18 to 21 of the 1995 Regulations;
  - (c) a notice provided for the purpose of regulation 31E of the 1995 Regulations (Surviving nominated partner’s pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1) shall be treated—
  - (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Department as a notice for the purposes of regulation 214;
  - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Department as a notice for the purposes of regulation 214 specifying that the Optants personal representatives are to receive any lump or pension on the death of the Optant; and
  - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Department as a declaration for the purposes of regulation 195.

### **2008 Section Optants: Transitional Tier 2 ill-health pension**

#### **260M**

- (1) This regulation applies to a 2008 Section Optant—
  - (a) who has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations; and
  - (b) that form and supporting medical evidence was received by the Department before the date on which the Department received the Optant’s option to join this Section of the Scheme.

(2) If the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 182(3) (“a tier 2 ill-health pension”) within a period of one year beginning with the day on which that Optant’s option to join this Section of the Scheme is received—

- (a) that Optant’s pensionable service shall be increased by the enhancement period determined in accordance with paragraph (3) (“the transitional enhancement period”); and
- (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant’s service under regulation 182(6).

This is subject to paragraph (5).

(3) In this regulation—

- (a) “the transitional enhancement period” means two-thirds of the Optant’s assumed pensionable service; and
- (b) “the Optant’s assumed pensionable service” means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching the age of 60.

This is subject to paragraph (4).

(4) If the transitional enhancement period determined under paragraph (3) is less than four years pensionable service, the transitional enhancement period by which the Optant’s pensionable service is increased shall be the lesser of—

- (a) four years pensionable service; and
- (b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching the age of 60.

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 182 are to be read as references to the “transitional enhancement period” determined under this regulation.

### **Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section**

#### **260N**

(1) This regulation applies to a 2008 Section Optant—

- (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 182; and
- (b) that form and supporting medical evidence is received by the Department before the end of the period of one year commencing on the day the Department received the Optant’s option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1) an Optant referred to in that paragraph becomes entitled to a pension under regulation 182(3) (“a tier 2 ill-health pension”)—

- (a) that Optant’s pensionable service shall be increased by the enhancement period determined in accordance with whichever of paragraph (3) or (4) of regulation 260M apply to the Optant; and
- (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant’s service under regulation 182(6).

This is subject to paragraph (3).

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(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 182 are to be read as references to the “transitional enhancement period” determined under this regulation.

**Application of regulation 183 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section**

**260O**

(1) This regulation applies to a 2008 Section Optant—

- (a) who submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and
- (b) that form and supporting medical evidence was received by the Department before the date on which the Department received the Optant’s option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 182(2) (“a tier 1 ill-health pension”)—

- (a) within a period of one year beginning with the day on which that Optant’s option to join this Section of the Scheme is received; and
- (b) immediately before joining this Section of the Scheme the Optant was notified under regulation 13B of the 1995 Regulations (Re-assessment of ill-health condition determined under regulation 13A) that the Optant may ask the Department to consider whether that Optant subsequently meets the tier 2 condition under that regulation,

that Optant shall be entitled to a re-assessment of entitlement to an ill-health pension determined under regulation 183 in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 182(3)

(a) at the date of the Department’s review, “permanently” shall mean until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 183, the Department determines that the Optant meets the condition in 182(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 182 but which shall be calculated in accordance in accordance with paragraph (5).

(5) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (4)—

- (a) the Optant’s service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 260M apply to that Optant; and
- (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant’s service under regulation 182(6).

This is subject to paragraph (6).

(6) In the case of an Optant to whom this regulation applies—

- (a) regulation 260M shall be read as if paragraph (3)(b) of that regulation included the words “from the date of the Department’s determination under regulation 183” after “continued in service”; and

- (b) references to the “enhancement period” in regulation 182 are to be read as references to the “transitional enhancement period” determined under this regulation.

**Application of regulation 183 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section**

**260P**

- (1) This regulation applies to a 2008 Section Optant—
  - (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 182;
  - (b) that form and supporting medical evidence was received by the Department before the end of the period of one year commencing on the day the Department received the Optant’s option to join this Section of the Scheme; and
  - (c) following a consideration of the form and medical evidence referred to in subparagraph (a)—
    - (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 182, and
    - (ii) at the time the Optant is awarded a pension under that regulation the Department gives the Optant notice in writing in accordance with regulation 183(1)(b) that the Optant’s case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 182(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 183, the Department determines that the Optant meets the condition in 182(3)(a), then as from the date on which that determination is made the Optant—
  - (a) ceases to be entitled to a tier 1 ill-health pension; and
  - (b) becomes entitled to a tier 2 ill-health pension under regulation 182 but which shall be calculated in accordance with paragraph (3).
- (3) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (2)—
  - (a) the Optant’s service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 260M apply to that Optant; and
  - (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant’s service under regulation 182(6).

This is subject to paragraph (4).
- (4) In the case of an Optant to whom this regulation applies—
  - (a) regulation 260M shall be read as if paragraph (3)(b) of that regulation included the words “from the date of the Department’s determination under regulation 183” after “continued in service”; and
  - (b) references to the “enhancement period” in regulation 182 are to be read as references to the “transitional enhancement period” determined under this regulation.

**Late payment of pension with actuarial increase for a 2008 Optant**

**260Q**

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(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 176 after reaching the age of 65.

(2) In the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—

- (a) the pensionable service and earnings that Optant is entitled to count under—
  - (i) regulation 260C,
  - (ii) regulation 260E (if any), and
  - (iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65; and

(b) any contributions paid under regulations 165, 167 or 168 before reaching that age, shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

(3) In paragraph (2) the reference to the amount of the pension is to the amount of pension—

- (a) before that pension had been reduced in accordance with regulation 260K; and
- (b) before any commutation under regulation 185.

(4) The amount of the increase referred to in paragraph (2) must be calculated in accordance with guidance and tables provided by the Scheme actuary to the Department for the purposes of this regulation.

(5) In preparing that guidance and those tables the Scheme actuary must use such factors as the Scheme actuary considers appropriate, having regard, in particular, to—

- (a) the period after reaching the age of 65 before the Optant becomes entitled to immediate payment of the pension; and
- (b) the life expectancy of the Optant.

(6) The increase shall apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 178.

### **Transitional Provision: Treatment of additional service and pensionable earnings in respect of Optants retiring on the grounds of ill Health**

#### **260R**

(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 260E.

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence if not included on the form pursuant to regulation 13A of the 1995 Regulations (Ill-health pension on early retirement);
- (b) that form and supporting medical evidence was received by the Department before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 72 of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to those Regulations (Paying for additional service or unreduced retirement lump sum by regular additional contributions); and
- (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 182 within a period

of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

that Optant will not be entitled to count a period of pensionable service under regulation 260E and—

(i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect of that period of additional service shall be returned to the Optant in accordance with regulation 73(2) of the 1995 Regulations (Part payment for additional service or unreduced retirement lump sum), and

(ii) paragraph (8) of regulation 260E will not apply.

(3) If—

(a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation 13A of the 1995 Regulations;

(b) that form and supporting medical evidence was received by the Department after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 72 of the 1995 Regulations; and

(c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 182 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 260E, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4).

(4) The period of pensionable service that an Optant is entitled to count under this regulation shall be a period of service equal to the difference between—

(a) the period of service the Optant is entitled to count under regulation 260E; and

(b) the period of service the Optant elected to purchase under regulation 67 of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to those Regulations calculated in accordance with regulation 73(3) of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to those Regulations and as if the member had become entitled to a pension under regulation 13A of those Regulations on the day the Department received that person's option to join this Section of the Scheme.

(5) For the purposes of calculating the Optant's benefits under this Section of the Scheme, the pensionable service the Optant is entitled to count under paragraph (4) will be added to the service the member is entitled to count under regulation 260C(3).

### **Treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable**

#### **260S**

(1) This regulation applies if a 2008 Section Optant who becomes a member of this Section of the Scheme—

(a) is entitled to benefits under this Part;

(b) has a period, or periods, of officer service under Part 2 that entitles the Optant to have benefits considered under Part 4; and

(c) has transferred—

(i) service up to 31st March 2008 from the 1995 Section that counts under regulation 136C, or

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(ii) service and superannuable earnings up to 31st March 2008 from the 1995 Section that counts under regulation 260C.

(2) If paragraph (1) applies—

- (a) superannuable service transferred from the 1995 Section under regulation 136C(4) will count at the full length determined before application of the factor specified in that regulation, for the purpose of comparing benefits payable as calculated in accordance with regulations 264 to 269A;
- (b) superannuable service transferred from the 1995 Section under regulation 136C(4) and superannuable earnings transferred from the 1995 Section under regulation 260C(4) will count at the length or value determined after the application of the factor specified in those regulations for the purpose of calculating—
  - (i) any reference amount referred to regulations 264 to 269A, and
  - (ii) any top up amount referred to in regulation 273 or, as the case may be, 274.

This is subject to paragraphs (4) and (5).

(3) This paragraph applies if a 2008 Section Optant has—

- (a) officer service that counts under regulation 136C(4); or
- (b) pensionable earnings in respect of practitioner service that counts under regulation 260C(4); and
- (c) that officer service or those pensionable earnings comprise two or more periods (separated by at least one day) of such service or two or more periods (separated by at least one day) in respect of which such earnings were earned.

(4) Where paragraph (3) applies, each separate period of officer service or each separate period in respect of which pensionable earnings were earned, shall be calculated using the formula set out in paragraph (5) for the purposes of calculating—

- (a) any reference amount referred to in regulations 264 to 269A; and
- (b) any top up amount referred to in regulation 273 or, as the case may be, 274.

(5) That formula is—

- (a) where paragraph (3)(a) applies—

$$\text{TNS} \times \text{PGSTGS}$$

where—

TNS is the total (net) service transferred to this Section of the Scheme under paragraph (4) of regulation 136B, after multiplying by the factor applicable to the case,

PGS is any part (gross) period of service within the total transferred to this Section of the Scheme under paragraph (4) of regulation 260C, before multiplying by the factor applicable to the case, and

TGS is the total (gross) service transferred to this Section of the Scheme under paragraph (4) of regulation 136C;

- (b) where paragraph (3)(b) applies—

$$\text{TNE} \times \text{PGETGE}$$

where—

TNE is the total net uprated pensionable earnings transferred to this Section of the Scheme under paragraph (4) of regulation 260C, after multiplying by the factor applicable to the case,

PGE is any part gross amount of uprated pensionable earnings within the total transferred to this Section of the Scheme under paragraph (4) of regulation 260C, before multiplying by the factor applicable to the case, and

TGE is the total gross amount of uprated pensionable earnings transferred to this Section under paragraph (4) of regulation 260C.

### **Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 260B**

#### **260T**

- (1) This regulation applies to a person who—
  - (a) on, or after, 1st October 2009—
    - (i) is an active member of the 1995 Section, or
    - (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation 65 of the 1995 regulations (Absence because of illness or injury or certain types of leave);
  - (b) has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement);
  - (c) that form and supporting medical evidence was received by the Department—
    - (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 260C, or
    - (ii) if such a statement has been issued to that person, before the date specified by the Department for the purposes of paragraph (3) of that regulation.
- (2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).
- (3) The option under paragraph (2) may only be exercised if—
  - (a) the person gives notice in writing to the Department in such form as it requires; and
  - (b) that notice is received by the Department within a period of four months starting with, where—
    - (i) that person is sent a written notification of the Department’s decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation 13A of the 1995 Regulations (“the first decision”), the date of that decision,
    - (ii) that person is sent a written notification of the Department’s decision in respect of the stage one dispute, (“a stage one decision”), the date of that decision,
    - (iii) that person is sent a written notification of the Department’s decision in respect of the stage two dispute, (“a stage two decision”), the date of that decision, or
    - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

- (4) Paragraph (3) shall cease to apply to any person if at any time that person—
  - (a) returns to practitioner service; or



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- (b) claims a pension under regulation 16 or 49 of the 1995 Regulations (which deal with an early retirement pension (with actuarial reduction) and preserved pensions respectively).

- (5) For the purpose of this regulation—

“stage one dispute” means a request made to the Department for a review of the first decision under Article 50 of the 1995 Order (Resolution of disputes), that is received by the Department within a period of one year starting with the date on which that person’s contract of employment is terminated;

“stage two dispute” means a request made to the Department to review the stage one decision under Article 50 of the 1995 Order that is received by the Department within a period of six months starting with the day on which that person is sent a written notification of a stage one decision;

“the final determination by the Pensions Ombudsman” means a written determination under section 147 of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage two decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage two decision.

## **2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation 13A of the 1995 Regulations**

### **260U**

- (1) This regulation applies to a 2008 Section Optant who—

- (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
- (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 182 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether an Optant can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 182, to—

- (a) a tier 1 ill-health pension; or
- (b) a tier 2 ill-health pension,

in respect of the later 2008 Section service, the Optant is entitled to the benefits set out in paragraph (4).

- (4) The benefits mentioned in paragraph (3) are—

- (a) the member’s tier 1 ill-health pension under regulation 13A of the 1995 Regulations in respect of the member’s earlier 1995 Section service; and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member’s later 2008 Section service.

This is subject to paragraph (5) and regulations 260M to 260P and 260R.

- (5) If the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service;

- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation 13B of the 1995 Regulations (Re-assessment of ill health condition under 13A); and
  - (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of later 2008 Section service on the termination of that later service,
- the Optant is entitled to the benefits set out in paragraph (6).
- (6) Those benefits are—
    - (a) a tier 2 ill-health pension paid in accordance with regulation 13B of the 1995 Regulations in respect of the earlier 1995 Section service; and
    - (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

**Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation 13A of the 1995 Regulations**

**260V**

- (1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—
  - (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section; and
  - (b) is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").
- (2) The lump sum payable on the death of an Optant referred to in paragraph (1) shall be—
  - (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant; and
  - (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 210.
- (3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 180, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—
  - (a) payable under regulation 182(5), if the deceased Optant had not reached the age of 65; or
  - (b) payable under regulation 176, if the deceased Optant had reached the age of 65,to which the deceased Optant would have been entitled at the date of the Optant's death.
- (4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 180, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—
  - (a) payable under regulation 182(5), if the deceased Optant had not reached the age of 65; or
  - (b) payable under regulation 176, if the deceased Optant had reached the age of 65,to which the Optant would have been entitled on the last day of the Optant's pensionable service.
- (5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 180, the lump sum referred to in paragraph (2)(a) shall be determined by the Department after taking advice from the Scheme actuary.

**Children's pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation 13A of the 1995 Regulations.**

**260W**

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(1) This regulation applies to a 2008 Section Optant (“a deceased Optant”) who, in respect of service in this Section of the Scheme, was—

- (a) at the date of the Optant’s death—
  - (i) an active member,
  - (ii) a non-contributing member,
  - (iii) a pensioner member, or
  - (iv) a deferred member; and
- (b) on that date was entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”).

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), “the basic death pension” for the purposes of paragraph (3) of regulation 203 shall have the meaning given in paragraph (3).

(3) The “basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 176 and—

- (a) in the case of a deceased Optant who was, at the date of the Optant’s death, an active member that pension will include the greater of—
  - (i) any increase due to such enhancement period that would have applied for the purposes of regulation 182(5) if the deceased Optant had become entitled to a tier 2 ill-health pension at that date, and
  - (ii) the deceased Optant’s later 2008 Section service as an active member plus the difference between—
    - (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service as an active member, and
    - (bb) 10 years pensionable service,
 where the amount of service in paragraph (aa) is less than that specified in paragraph (bb);
- (b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the Scheme on the date of that Optant’s death.

(4) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of paragraph (3) of regulation 204 shall have the meaning given in paragraph (5).

(5) The “basic death pension” means the greater of—

- (a) twice the appropriate proportion of the deceased Optant’s annual pension (disregarding any additional pension); and
- (b) twice the appropriate proportion of the annual pension to which the deceased Optant would have been entitled calculated as the aggregate of the deceased Optant’s later 2008 Section service plus the difference between—
  - (i) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service, and
  - (ii) 10 years pensionable service,
 where the amount of service in head (i) is less than that specified in head (ii).

(6) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of paragraph (3) of regulation 205 shall have the meaning given in paragraph (7).

(7) The “basic death pension” means—

- (a) if the deceased Optant died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 203 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension); and
- (b) if the deceased Optant died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
  - (i) twice the appropriate proportion of the pension to which the deceased Optant would have been entitled if the deceased had become entitled to a pension under regulation 176 on the date of death (disregarding any additional pension), and
  - (ii) twice the appropriate proportion of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant's later 2008 Section service that has been deferred plus the difference between—
    - (aa) the aggregate of the deceased Optant's earlier 1995 Section service and the later 2008 Section service that has been deferred, and
    - (bb) 10 years pensionable service,where the amount of service in paragraph (aa) is less than that specified in paragraph (bb).]

## [<sup>F649</sup>CHAPTER 11

### Textual Amendments

**F649** Pt. 3 Ch. 11 inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Injury Benefits and Additional Voluntary Contributions\), Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/286\)](#), **reg. 51**, reg. 1(2)

### Waiting Period Joiners

#### Application of Chapter 11 of this Part

**260X.**—(1) This Chapter makes provision in relation to pensioner members of the 1995 Section of the Scheme who are eligible to be members of this Section of the Scheme in accordance with paragraph (1)(b)(ii) of regulation 153A (Eligibility: transitional).

(2) A member of this Section of the Scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

#### Nominations and notices accepted by the Department under the 1995 Regulations and Chapter 5 of this Part of these Regulations

**260Y.**—(1) This regulation applies if—

- (a) on the day a Waiting Period Joiner becomes an active member of this Section of the Scheme—
    - (i) the Department has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of that Joiner, and
    - (ii) that Joiner has not revoked that nomination or notice; or
  - (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the Scheme, that Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table at paragraph (4).
- (2) The nominations and notices referred to in paragraph (1)(a) are—

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- (a) a nomination made in accordance with regulation 22 of the 1995 Regulations (Payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations 18 to 21 of those Regulations (which deal with lump sum payments on the death of a member in different circumstances);
- (b) a notice provided for the purposes of paragraph (3)(a) of regulation 22 of the 1995 Regulations that the person’s surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations 18 to 21 of those Regulations;
- (c) a notice provided for the purpose of regulation 31E of the 1995 Regulations (Surviving nominated partner’s pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1)(a) shall be treated—
- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Department as a notice for the purposes of regulation 214;
- (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Department as a notice for the purposes of regulation 214 specifying that the Waiting Period Joiner’s personal representatives are to receive any lump sum or pension on the death of that Joiner; and
- (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Department as a declaration for the purposes of regulation 195.
- (4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table shall, without more, be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

<i>Column 1</i>	<i>Column 2</i>
<b>1995 Regulations</b>	<b>2008 Regulations</b>
22	214
31E	195

### **Waiting Period Joiners who are in receipt of a tier 1 ill-health pension under Regulation 13A of the 1995 Regulations**

**260Z.**—(1) This regulation applies to a Waiting Period Joiner who—

- (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
- (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 182 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether a Waiting Period Joiner can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) A Waiting Period Joiner is entitled to the benefits set out in paragraph (4) if, on the termination of the later 2008 Section service, that Joiner becomes entitled to a tier 1 or a tier 2 ill-health pension under regulation 182 in respect of that later service.

(4) Those benefits are—

- (a) a tier 1 ill-health pension under regulation 13A of the 1995 Regulations in respect of the member's earlier 1995 Section service; and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member's later 2008 Section service.

This is subject to paragraph (5).

(5) A Waiting Period Joiner is entitled to the benefits set out in paragraph (6) where that Joiner—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service;
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation 13B of the 1995 Regulations (Re-assessment of ill health condition determined under regulation 13A); and
- (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the later 2008 Section service on the termination of that later service.

(6) Those benefits are—

- (a) a tier 2 ill-health pension paid in accordance with regulation 13B of the 1995 Regulations in respect of the earlier 1995 Section service; and
- (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

### **Lump sum payable on the death of a Waiting Period Joiner**

**260ZA.**—(1) This regulation applies to a Waiting Period Joiner who, on the date of that Joiner's death, is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of a Joiner referred to in paragraph (1) shall be calculated in accordance with whichever of paragraphs (3) to (6) applies to that Joiner and shall be paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Joiner's later 2008 Section service under regulation 210.

(3) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member who had not reached age 65 and who had not exercised the option under regulation 180, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 182(5) to which that deceased Joiner would have been entitled at that date, multiplied by five.

(4) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member who had reached age 65 and who had not exercised the option under regulation 180, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 176 to which that deceased Joiner would have been entitled at that date, multiplied by five.

(5) Where, at the date of a Waiting Period Joiner's death, that Joiner was a non-contributing member who had not exercised the option under regulation 180, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension to which that Joiner would have been entitled under regulation 176 on the last day of that Joiner's pensionable service, multiplied by five.

(6) Where, at the date of a Waiting Period Joiner's death, that Joiner was an active member or a non-contributing member who had exercised the option under regulation 180, the lump sum referred to in paragraph (2) shall be determined by the Department after taking advice from the Scheme actuary.

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### **Children’s pensions payable on the death of a Waiting Period Joiner**

**260ZB.**—(1) This regulation applies in respect of a Waiting Period Joiner’s service in this Section of the Scheme, where at the date of that Joiner’s death that Joiner was an active, non-contributing, pensioner or deferred member who was entitled to a pension under the 1995 Regulations in respect of service in the 1995 Section (“the earlier 1995 Section service”).

(2) In the case of a deceased Waiting Period Joiner who, at the date of that Joiner’s death, was an active or non-contributing member, “the basic death pension” for the purposes of paragraph (3) of regulation 203 shall have the meaning given in paragraph (3).

(3) The “basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 176 and—

- (a) in the case of a deceased Waiting Period Joiner who was, at the date of that Joiner’s death, an active member that pension includes the greater of—
  - (i) any increase due to such enhancement period that would have applied for the purposes of regulation 182(5) if that Joiner had become entitled to a tier 2 ill-health pension at that date, and
  - (ii) that Joiner’s later 2008 Section service as an active member plus the difference between—
    - (aa) the aggregate of that Joiner’s earlier 1995 Section service and the later 2008 Section service as an active member; and
    - (bb) 10 years pensionable service,

where the amount of service in paragraph (aa) is less than that specified in paragraph (bb);

- (b) in the case of a deceased Waiting Period Joiner who was, at the date of that Joiner’s death a non-contributing member, the pensionable service that Joiner was entitled to count under this Section of the Scheme on the date of that Joiner’s death.

(4) In the case of a deceased Waiting Period Joiner who was a pensioner member at the date of that Joiner’s death, “the basic death pension” for the purposes of paragraph (3) of regulation 204 shall have the meaning given in paragraph (5).

(5) The “basic death pension” means the greater of—

- (a) twice the appropriate proportion of the deceased Waiting Period Joiner’s annual pension (disregarding any additional pension); and
- (b) twice the appropriate proportion of the annual pension (disregarding any additional pension), to which that Joiner would have been entitled calculated as the aggregate of that Joiner’s later 2008 Section service plus the difference between—
  - (i) the aggregate of that Joiner’s earlier 1995 Section service and the later 2008 Section service, and
  - (ii) 10 years pensionable service,

where the amount of service in head (i) is less than that specified in head (ii).

(6) In the case of a deceased Waiting Period Joiner who was a deferred member at the date of that Joiner’s death, “the basic death pension” for the purposes of paragraph (3) of regulation 205 shall have the meaning given in paragraph (7).

(7) The “basic death pension” means—

- (a) if the deceased Waiting Period Joiner died within 12 months of the day on which that Joiner ceased to be an active member or a non-contributing member (the cessation date), the amount that would be the basic death pension for the purposes of regulation 203 if that Joiner had died on the cessation date (disregarding any additional pension), and

- (b) if the deceased Waiting Period Joiner died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
- (i) twice the appropriate proportion of the pension to which that Joiner would have been entitled if that joiner had become entitled to a pension under regulation 176 on the date of death (disregarding any additional pension), and
  - (ii) twice the appropriate proportion of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service that has been deferred plus the difference between—
    - (aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service that has been deferred, and
    - (bb) 10 years pensionable service,where the amount of service in paragraph (aa) is less than that specified in paragraph (bb).]

## PART 4

### BENEFITS IN CASES OF MIXED SERVICE

#### CHAPTER 1

#### INTRODUCTION

##### *Application of Part 4*

##### **Application of Part 4**

- 261.**—(1) This Part applies where a member has pensionable service under both Part 2 and Part 3.
- (2) Where this Part applies, Parts 2 and 3 are subject to the modifications provided in this Part.
- (3) As regards a person to whom the general rule in regulation 110 (general rule: separate treatment of service etc.) or regulation 237 (general rule: separate treatment of service etc.) applies, this Part shall apply separately to benefits in respect of the earlier service and the later service (as defined in regulation 109 or 236, as appropriate).

##### *Preliminary*

##### **Interpretation: general**

**262.** In this Part—

“the base amount” means the aggregate of the benefits that would be payable separately under Part 2 and Part 3 but for the operation of this Part;

“calculation method A” means the calculation method provided for in regulation 270;

“calculation method B” means the calculation method provided for in regulation 271;

“calculation method C” means the calculation method provided for in regulation 272;

[<sup>F650</sup>“calculation method D” means the calculation method provided for in regulation 272A;

“increment period” has the meaning given in regulation 272A(2);]

“officer” has the same meaning as in Part 2;

“practitioner” has the same meaning as in Part 3;



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F651  
...

“uprated earnings” has the same meaning as in Part 3.

#### Textual Amendments

- F650** Words in [reg. 262](#) inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **97(a)**
- F651** Words in [reg. 262](#) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **97(b)**

## CHAPTER 2

### COMPARISON OF ENTITLEMENTS

#### *Application of Chapter 2*

#### **Application of Chapter 2**

**263.—(1)** This Chapter identifies the calculation method under which the benefits payable in respect of discrete periods of pensionable service as an officer are to be compared against the benefits that would have been payable had that service been service as a practitioner.

(2) The discrete periods of pensionable service as an officer that are subject to comparison are any periods of—

- (a) up to 10 years of pensionable service as an officer before first becoming a <sup>F652</sup>... medical or dental practitioner,
- (b) more than 10 years of pensionable service as an officer before first becoming a <sup>F652</sup>... medical or dental practitioner,
- (c) up to 1 year of employment as an officer after last ceasing to be a practitioner,
- (d) more than 1 year of employment as an officer after ceasing to be a practitioner,
- (e) less than 1 year of pensionable service as an officer concurrently with pensionable service as a practitioner, and
- (f) more than 1 year of pensionable service as an officer concurrently with pensionable service as a practitioner.

#### Textual Amendments

- F652** Word in [reg. 263\(2\)\(a\)\(b\)](#) omitted (with effect in accordance with reg. 1(2) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **98**

*Officer service before practitioner service*

**Cases with up to 10 years of officer service**

**264.**—(1) Where a member has not more than 10 years of pensionable service before first becoming a <sup>F653</sup>... medical practitioner, the reference amount shall be the best of—

- (a) the amount determined by calculation method A,
- (b) the amount determined by calculation method B, and
- (c) where—
  - (i) the benefit is payable on retirement or death of the member, and
  - (ii) the condition is met,the base amount.

(2) The condition mentioned in paragraph (1)(c)(ii) is that—

- (a) the amount of pension payable under Part 2 would be greater than the amount of pension payable under Part 3, where—
  - (i) any enhancement for the purposes of regulation 52 or 182 (enhancement of ill-health pensions), as appropriate, is ignored,
  - (ii) any additional pension is disregarded, and
  - (iii) any increase under the Pensions (Increase) Act (Northern Ireland) 1971 is applied, and
- (b) the amount determined by calculation method B is less than the base amount.

**Textual Amendments**

**F653** Word in [reg. 264\(1\)](#) omitted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\)](#), and [Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **99**

**Cases with more than 10 years of officer service**

**265.** Where a member has more than 10 years of pensionable service before first becoming a <sup>F654</sup>... medical practitioner, the reference amount shall be the better of—

- (a) the amount determined by calculation method A, and
- (b) the base amount.

**Textual Amendments**

**F654** Word in [reg. 265](#) omitted (with effect in accordance with [reg. 1\(2\)](#) of the amending Rule) by virtue of [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\)](#), and [Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), [regs. 1\(2\)](#), **100**

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### *Officer service after practitioner service*

#### **Cases with less than 1 year of officer service**

**266.** Where a member has been employed as an officer for less than 1 year after last ceasing to be a practitioner, the reference amount shall be the amount determined by calculation method A.

#### **Cases with 1 year or more of officer service**

**267.** Where a member has been employed as an officer for 1 year or more after last ceasing to be a practitioner, the reference amount shall be the better of—

- (a) the amount determined by calculation method C, and
- (b) the base amount.

### *Concurrent officer and practitioner service*

#### **Cases with less than 1 year of concurrent officer service**

**268.** Where a member has less than 1 year of pensionable service as an officer concurrently with pensionable service as a practitioner, the reference amount shall be the amount determined by calculation method A.

#### **Cases with 1 year or more of concurrent officer service**

**269.** Where a member has 1 year or more of pensionable service as an officer concurrently with pensionable service as a practitioner, the reference amount shall be the better of—

- (a) the amount determined by calculation method A, and
- (b) the base amount.

### *<sup>F655</sup>Non-concurrent Officer and Practitioner Service*

#### **Textual Amendments**

**F655** Reg. 269A inserted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **101**

#### **Cases with non-concurrent officer service between periods of practitioner service**

##### **269A**

(1) Where a member who, before commencing the member's final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—

- (a) that officer service is preceded by an earlier period of practitioner service; and
- (b) some or all of the member's officer service is not concurrent with practitioner service,

the reference amount in respect of such part of that officer service that is not concurrent with practitioner service shall be the better of—

- (i) the amount determined by calculation method D, and

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(ii) the base amount.]

### Calculation methods

#### Calculation method A

**270.**—<sup>F656</sup>(1)] Calculation method A is the aggregate of—

- (a) the amount that would be payable under Part 3 if—
  - (i) the member's discrete period of pensionable service as an officer were treated as pensionable service as a practitioner, and
  - (ii) the amount of pensionable pay received in respect of that officer service were treated as pensionable earnings as a practitioner for the respective period,
- (b) the amount payable under Part 2 (if any) if the member's pensionable service as an officer were reduced by the discrete period of pensionable service as an officer in subparagraph (a), and
- (c) the amount payable under Part 3 but for the operation of this Part.

<sup>F657</sup>(2) Where paragraph (1) applies—

- (a) the member is entitled to count part of the period of officer service referred to in that paragraph as a result of a transfer-in under regulation 229; and
- (b) the transfer-in is other than a transfer-in referred to in regulation 230(6),

for the purposes of any calculation under regulation 264(1)(a) or 265(a), the amount of the pensionable pay deemed to be received in respect of that part period of officer service will be calculated in accordance with regulation 230(2).]

#### Textual Amendments

**F656** Reg. 270 renumbered as reg. 270(1) (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **102(2)**

**F657** Reg. 270(2) added (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), regs. 1(2), **102(3)**

#### Calculation method B

**271.** Calculation method B is the aggregate of—

- (a) the amount payable under Part 3 if the member's uprated earnings is increased by the formula—

$$UE \times \frac{LPS_o + LPS_p}{LPS_p}$$

where—

UE is the amount of the member's uprated earnings,

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LPS<sub>o</sub> is the length of the member's discrete period of pensionable service as an officer, expressed in days, and

LPS<sub>p</sub> is the length of the member's pensionable service as a practitioner, expressed in days, and

- (b) the amount payable under Part 2 (if any) if the member's pensionable service as an officer were reduced by the discrete period of pensionable service as an officer in subparagraph (a).

### Calculation method C

**272.** Calculation method C is the aggregate of—

- (a) the amount that would be payable under Part 3 if the member's pensionable earnings as a practitioner were uprated to the date of—
  - (i) cessation of the employment as an officer, or
  - (ii) retirement,
 whichever is the earlier, and
- (b) the amount payable under Part 2.

### [<sup>F658</sup> Calculation method D

#### 272A

(1) Calculation method D is the aggregate of the amounts payable under paragraphs (2), (3) and (4).

(2) The amounts payable under this paragraph are the additional amount that would be payable under Part 2 for the member's period, or periods, of non-concurrent officer service (described in regulation 269A of this Part) in respect of the member's pension and any retirement lump sum payable—

- (a) as a result of the member exercising the option under regulation 185, and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 260K,

if those amounts were each subject to a 1.5% increase for each whole year or part of a year within the increment period.

This is subject to paragraph (5).

(3) The amounts payable under this paragraph are the amounts that would be payable under Part 2 for the member's period, or periods, of non-concurrent officer service (described in regulation 269A of this Part), were it not for the additional amounts calculated under paragraph (2).

(4) The amounts payable under this paragraph are the amounts payable under Chapter 4 of Part 3.

(5) For the purposes of paragraph (2)—

- (a) the increase referred to in that paragraph shall—
  - (i) be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act (Northern Ireland) 1971, and
  - (ii) be effective immediately before the pension and lump sum become payable with the member's benefits from practitioner service under Chapter 4 of Part 3; and
- (b) the increment period referred to in paragraph (2) shall—

- (i) begin with the day immediately following the day on which the officer service referred to in paragraph (2) ceased for the last time, and

- (ii) end with the day immediately before the pension and retirement lump sum become payable with the member's benefits from practitioner service under Chapter 4 of Part 3.]

#### Textual Amendments

**F658** Reg. 272A added (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **103**

### CHAPTER 3

#### MODIFICATION OF BENEFITS

##### *Members' retirement benefits*

#### **Top-up where reference amount greater than base amount**

**273.**—(1) Where the reference amount calculated in any of regulations 264 to [F659269A] is greater than the base amount, a top-up amount is payable.

(2) The top-up amount is equal to the aggregate of the amounts by which the reference amount is greater than the base amount in each of regulations 264 to [F659269A] (where applicable).

(3) The top-up amount provided for under this regulation shall be treated as forming part of the member's pension for the purposes of increases payable under the Pensions (Increase) Act (Northern Ireland) 1971, and shall be increased in similar manner to pensions payable under Parts 2 and 3.

#### Textual Amendments

**F659** Word in reg. 273(1)(2) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by [The Health and Personal Social Services \(Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions\), and Health and Social Care \(Pension Scheme\) \(Amendment\) Regulations \(Northern Ireland\) 2010 \(S.R. 2010/22\)](#), regs. 1(2), **104**

##### *Death benefits*

#### **Death benefits where member entitled to top-up**

**274.**—(1) This regulation applies in relation to any benefit payable under Chapter 5 of Part 2 (death benefits) and Chapter 5 of Part 3 (death benefits) where the deceased member is (or would have been) entitled to a top-up amount under regulation 273.

(2) In calculating the amount of the benefit payable under Chapter 5 of Part 2, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension shall be treated as being the pension payable to the member had no benefit been payable in respect of any discrete period of pensionable service as an officer that gives rise to a top-up payment under regulation 273.

(3) In calculating the amount of the benefit payable under Chapter 5 of Part 3, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a

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member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension shall be treated as being the sum of—

- (a) the pension payable under Part 3, and
- (b) the top-up amount payable under regulation 273, inclusive of any increase payable under the Pensions (Increase) Act (Northern Ireland) 1971 pursuant to paragraph (3) of that regulation.

## CHAPTER 4

### GENERAL MODIFICATIONS

#### *45 year service limit*

#### **Pensionable service limit**

**275.**—(1) Subject to paragraph (3), in determining whether or not a member has reached 45 years of pensionable service for the purposes of regulation 7, the amount of pensionable service accrued under Part 3 shall be included in the aggregate calculated under paragraph (1) of that regulation.

(2) Subject to paragraph (3), in determining whether or not a member has reached 45 years of pensionable service for the purposes of regulation 139, the amount of pensionable service accrued under Part 2 shall be included in the aggregate calculated under paragraph (1) of that regulation.

(3) Where a person is concurrently in officer service and practitioner service in any year, that year shall count as a single year for the purpose of calculating 45 years pensionable service.

(4) Where the aggregate of pensionable service under Part 2 and Part 3 is in excess of 45 years—

- (a) benefits under each of Part 2 and Part 3 shall be calculated by reference to such number of years as the Department determines;
- (b) the aggregate of pensionable service under Part 2 and Part 3 determined in subparagraph (a) shall be 45 years; and
- (c) the Department shall select the years by reference to which the benefits under each Part are to be calculated, selecting the years which produce the most favourable result to the member.

[<sup>F660</sup>(5) Where a member is also a member of the [<sup>F661</sup>1995 Section] , any reference in this Part to “45 years” shall be taken to be a reference to a shorter period determined by the formula—

$SP=45yearsLSS$

where—

SP is the shorter period, measured in years and days, and

LSS is the length of superannuable service (within the meaning of the 1995 Regulations), measured in years and days, giving rise to membership of the [<sup>F661</sup>1995 Section] and, in the case of a member of [<sup>F662</sup>that Section] who has become entitled to a pension (including a preserved pension) under [<sup>F662</sup>that Section] , including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.]

#### **Textual Amendments**

**F660** Reg. 275(5) added (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health

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and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **82** (with reg. 89)

**F661** Words in reg. 275(5) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 2**

**F662** Words in reg. 275(5) substituted (with effect in accordance with reg. 1(2) of the amending Rule) by The Health and Personal Social Services (Superannuation Scheme, Compensation for Premature Retirement and Additional Voluntary Contributions), and Health and Social Care (Pension Scheme) (Amendment) Regulations (Northern Ireland) 2010 (S.R. 2010/22), reg. 1(2), **Sch. 2 Pt. 3**

### Claims and notices

#### Applications, claims and notices

**276.** An application or claim made or a notice given for the purposes of a regulation listed in column 1 of the following table shall be treated as an application or claim made or notice given for the purposes of the corresponding regulation in column 2 (and vice versa).

**Table**

<i><sup>F663</sup>Column 1</i> <i>Regulation in Part 2</i>	<i>Column 2</i> <i>Regulation in Part 3</i>
45	176
52	182
54	184
58	185
59	186
62	189
68	195
87	214
94	221
95	222]

#### Textual Amendments

**F663** Reg. 276 Table substituted (with effect in accordance with reg. 1(3) of the amending Rule) by The Health and Personal Social Services (Superannuation), Health and Social Care (Pension Scheme) and Health and Personal Social Services (Injury Benefits) (Amendment and Transitional Provisions) Regulations (Northern Ireland) 2009 (S.R. 2009/65), regs. 1(2), **83** (with reg. 89)



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## Abatement

### Reduction of pension

**277.**—(1) The pension payable under Part 3 shall be reduced in accordance with Chapter 8 but with the following modifications—

- (a) relevant income shall include the enhancement amount determined under regulation 118(2); and
- (b) where a practitioner becomes entitled to receive a pension under Part 3 and in the 12 months preceding the date on which the member becomes so entitled also held concurrent pensionable employment as an officer, the member's previous earnings in respect of the member's practitioner service shall be increased by the amount of the member's previous pay in respect of the member's officer service.

(2) Where the reduction applied under the modified Part 3 is not the full amount of the excess determined under that modified Part, such part of the excess as has not given rise to a reduction in the old service pension in Part 3 shall be the excess for the purposes of regulation 117(3).

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 17th June 2008.

L.S.  
Department of Health, Social Services and  
Public Safety

*David C. Bingham*  
A senior officer of the

The Department of Finance and Personnel hereby consents to the foregoing Regulations.  
Sealed with the Official Seal of the Department of Finance and Personnel on 17th June 2008.

L.S.  
Department of Finance and Personnel

*Adrian Arbuthnot*  
A senior officer of the

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which come into operation on 1st July 2008 and have effect retrospectively from 1st April 2008, apply to people employed in Health and Social Care on or after 1st April 2008 or in such employment immediately before that date, but not in the pension scheme contained in the Health and Personal Social Services (Superannuation) Regulations (Northern Ireland) 1995 (S.R. 1995 No. 95) and wishing to join under these arrangements.

Retrospection is authorised by Article 14(1) of the Superannuation (Northern Ireland) Order 1972 S.I. 1972/1073 (N.I. 10).

The Regulations are divided into four Parts, each with Chapters dealing with different aspects of the Scheme.

Part 1 contains introductory material, and sets out the circumstances in which Parts 2 to 4 apply. It also sets out the provisions relating to Scheme reports and accounts and cost sharing.

Part 2 sets out the provisions applying to people working in Health and Social Care as Officers. Chapter 1 contains definitional matters. Regulation 6 contains general definitions. The remainder of Chapter 1 contains definitions that are relevant for entitlement to and calculation of benefits under the Scheme. Regulations 7 to 12 deal with the meaning of “pensionable service” and “qualifying service” and how service is calculated. Regulations 13 to 19 deal with “pensionable pay” and “reckonable pay”

Chapter 2 (regulations 21 to 26) sets out the conditions that must be met for a person to be eligible to belong to the Scheme, and also deals with leaving and rejoining it. Most people will become members of the Scheme automatically on entering their employment unless they wish not to belong to it.

Chapter 3 deals with contributions to the Scheme. Regulations 27 to 30 are about the members' compulsory contributions. Regulations 31 to 33 relate to employers' contributions and the circumstances in which they can be required to give guarantees, indemnities etc. to cover their contributions. Regulations 34 to 43 are about the members' rights to purchase additional pension by paying extra contributions either by instalments over a period of up to 20 years or by lump sum. Regulation 37 enables such pension to be bought for a member by the member's employer. Chapter 4 deals with the pensions to which members become entitled on retirement. Regulations 45 to 57 set out different entitlements for those who retire on reaching 65, those who leave earlier, those who retire later with an actuarial increase, those who want earlier payment with actuarial reduction, those who wish partially to retire with only part of their pension in payment, those who retire early with ill-health or on the termination of their employment on the grounds of efficiency or redundancy, and pension credit members. They also enable members whose pay is reduced to have higher paid earlier service treated separately. Regulations 58 and 59 enable members to exchange pension for lump sums. Regulations 60 and 61 deal with the effect of pension sharing on divorce. Regulations 62 to 64 enable members to allocate part of their pension to others.

Chapter 5 sets out the benefits that are payable on the death of a member. It provides for pensions to be payable to surviving spouses, civil partners and other adult dependants and eligible children. It also provides for lump sums to be paid to nominees, adults to whom a pension is payable or personal representatives.

Chapter 6 deals with members' rights under the Scheme to have a transfer payment paid by the Scheme into another scheme, and the right of a member to have a transfer payment from another scheme accepted by the Scheme so that the member is entitled to count further pensionable service in the Scheme. (The rights to transfers out supplement the members' rights under the Pension Schemes (Northern Ireland) Act 1993. There are special arrangements for those going to or

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from other public sector schemes, those who transfer in or out with a number of other similar employees, and transfers with EU and other overseas transfers.

Chapter 7 deals with members who have more than one period of service that counts for the Scheme because they are re-employed. As a general rule the rights relating to such separate periods of service are dealt with separately, but this does not apply if aggregation of the periods would give rise to more favourable benefits. There are also special rules to provide for ill-health pensioners and those transferred out of the Scheme on a transfer of an undertaking.

Chapter 8 deals with the abatement of pensions in certain circumstances where pensioners are re-employed in Health and Social Care.

Chapter 9 contains miscellaneous and supplementary provisions, for example, relating to claims for and payment of benefits, the commutation of small pensions, the forfeiture of benefits in certain circumstances, the deduction of tax and the payment of interest where the payment of benefits or refunds of contributions are late.

Part 3 sets out the provisions applying to people working in Health and Social Care as Practitioners or Out-of-Hours Providers.

Chapter 1 contains definitional matters. Regulations 137 and 138 contain definitions. The remainder of Chapter 1 contains definitions that are relevant for entitlement to and calculation of benefits under the Scheme. Regulations 139 to 142 deal with the meaning of “pensionable service” and “qualifying service” and how service is calculated. Regulations 143 to 151 deal with “pensionable earnings” and regulation 152 deals with out-of-hours providers.

Chapter 2 sets out the conditions that must be met for a person to be eligible to belong to the Scheme, and also deals with leaving and rejoining it. Most people will become members of the Scheme automatically on entering their employment unless they wish not to belong to it.

Chapter 3 deals with contributions to the Scheme. Regulations 160 and 161 are about the members' compulsory contributions. Regulations 162 to 164 relate to employers' contributions and the circumstances in which they can be required to give guarantees, indemnities etc. to cover their contributions. Regulations 165 to 174 are about the members' rights to purchase additional pension by paying extra contributions either by instalments over a period of up to 20 years or by lump sum. Regulation 168 enables such pension to be bought for a member by the member's employer. Chapter 4 deals with the pensions to which members become entitled on retirement. Regulations 176 to 184 set out different entitlements for those who retire on reaching 65, those who leave earlier, those who retire later with an actuarial increase, those who want earlier payment with actuarial reduction, those who wish partially to retire with only part of their pension in payment, those who retire early with ill-health or on the termination of their employment on the grounds of efficiency or redundancy, and pension credit members. They also enable members whose pay is reduced to have higher paid earlier service treated separately. Regulations 185 and 186 enable members to exchange pension for lump sums. Regulations 187 and 188 deal with the effect of pension sharing on divorce. Regulations 189 to 191 enable members to allocate part of their pension to others. Regulation 192 deals with dual capacity membership and regulation 193 deals with guaranteed minimum pensions

Chapter 5 sets out the benefits that are payable on the death of a member. It provides for pensions to be payable to surviving spouses, civil partners and other adult dependants and eligible children. It also provides for lump sums to be paid to nominees, adults to whom a pension is payable or personal representatives.

Chapter 6 deals with members' rights under the Scheme to have a transfer payment paid by the Scheme into another scheme, and the right of a member to have a transfer payment from another scheme accepted by the Scheme so that the member is entitled to count further pensionable service in the Scheme. (The rights to transfers out supplement the members' rights under the Pension Schemes (Northern Ireland) Act 1993. There are special arrangements for those going to or from other public sector schemes, those who transfer in or out with a number of other similar employees, and transfers with EU and other overseas transfers.

Chapter 7 deals with members who have more than one period of service that counts for the Scheme because they are re-employed. As a general rule the rights relating to such separate

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periods of service are dealt with separately, but this does not apply if aggregation of the periods would give rise to more favourable benefits. There are also special rules provide for ill-health pensioners and those transferred out of the Scheme on a transfer of an undertaking.

Chapter 8 deals with the abatement of pensions in certain circumstances where pensioners are re-employed in Health and Social Care.

Chapter 9 contains miscellaneous and supplementary provisions, for example, relating to claims for and payment of benefits, the commutation of small pensions, the forfeiture of benefits in certain circumstances, the deduction of tax and the provision of information relevant for tax purposes and the payment of interest where the payment of benefits or refunds of contributions are late.

Part 4 sets out the provisions applying to people who have worked in Health and Social Care as both Officers and Practitioners.

Chapter 1 deals with the application of Part 4 and contains definitional matters.

Chapter 2 compares benefit entitlement under Parts 2 and 3 of these Regulations.

Chapter 3 provides for the modification of members' retirement benefits and death benefits under Parts 2 and 3 of these Regulations.

Chapter 4 provides for modifications in respect of the calculation of the 45 years' pensionable service limit; for certain applications, claims or notices made under Part 2 to act as such for Part 3 (and vice versa); and for the modification of the rules on abatement.

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