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STATUTORY INSTRUMENTS

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**2015 No. 94**

**PUBLIC SERVICE PENSIONS,  
ENGLAND AND WALES  
NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service Pension Scheme Regulations 2015**

*Made* - - - - *5th February 2015*  
*Laid before Parliament* *12th February 2015*  
*Coming into force* - - *1st April 2015*

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by sections 1(1) and (2)(e), 2 to 4, 5(1), (2) and (4), 7(1) and (4), 8(1)(a) and (2)(a), 11(1), 12(6) and (7)(1), 14, 18(5) to (7), 25, and paragraph (c) of the definition of “employer” in section 37 of, and paragraph 5(a) of Schedule 2 and Schedule 3 to, the Public Service Pensions Act 2013(2).

In accordance with section 21 of that Act, the Secretary of State has consulted the representatives of such persons as appear to the Secretary of State likely to be affected by these Regulations.

In accordance with section 3(5) of that Act, these Regulations are made with the consent of the Treasury.

**PART 1**

**Preliminary**

**Citation, extent and commencement**

1. These Regulations—
  - (a) may be cited as the National Health Service Pension Scheme Regulations 2015;
  - (b) come into force on 1st April 2015; and
  - (c) extend to England and Wales.

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(1) See also section 12(1), coming into force on 1st April 2015.  
(2) 2013 c.25.

## **Establishment of the NHS Pension Scheme 2015**

2.—(1) A scheme is established for the payment of pensions and other benefits to or in respect of—

- (a) health service workers mentioned in regulation 18(1); and
  - (b) such other persons mentioned in regulation 18(2).
- (2) This scheme is to be known as the NHS Pension Scheme 2015.

## **PART 2**

### **Governance**

#### **CHAPTER 1**

#### **Management**

### **Scheme manager**

3.—(1) The Secretary of State is the scheme manager and is responsible for managing or administering—

- (a) this scheme; and
- (b) any statutory pension scheme that is connected with it.

(2) The Secretary of State may make arrangements for any or all of the functions and responsibilities as scheme manager under these Regulations to be performed on the Secretary of State's behalf by—

- (a) the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)(3); or
- (b) one or more persons or bodies corporate or unincorporate (and where more than one, may include that Authority),

but any such arrangements do not affect the Secretary of State's liability for those functions and responsibilities.

### **Pension Board**

4. There is to be a Pension Board constituted in accordance with Schedule 1 which has responsibility for assisting the scheme manager in relation to—

- (a) securing compliance with these Regulations and other legislation relating to the governance and administration of—
  - (i) this scheme; and
  - (ii) any statutory pension scheme that is connected with it;
- (b) securing compliance with any requirements imposed by the Pensions Regulator in relation to—
  - (i) this scheme; and
  - (ii) any statutory pension scheme that is connected with it.

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(3) The Authority was established by [S.I. 2005/2414](#).

### **Scheme Advisory Board**

5. There is to be a Scheme Advisory Board constituted in accordance with Schedule 2 which has responsibility for providing advice where requested to the Secretary of State on the desirability of changes to—

- (a) this scheme; and
- (b) any statutory pension scheme that is connected with it.

## **CHAPTER 2**

### **Actuary and valuation**

#### **Appointment of scheme actuary**

6.—(1) The Secretary of State must appoint a person (the scheme actuary) for the purposes of carrying out—

- (a) actuarial valuations of this scheme and connected schemes required by Treasury directions given under section 11 of the 2013 Act; and
- (b) such other actuarial functions as may be required in relation to this scheme or a connected scheme.

(2) Before making an appointment under paragraph (1), the Secretary of State must be satisfied that the person to be appointed is appropriately qualified.

#### **Actuarial valuations**

7.—(1) The scheme actuary must carry out an actuarial valuation of this scheme and connected schemes as at the effective date.

(2) The scheme actuary must provide a valuation report to the scheme manager not later than such date as may be agreed by the Secretary of State.

(3) The effective date is—

- (a) in respect of the first valuation under paragraph (1), 31st March 2016;
- (b) in respect of subsequent valuations, such dates as enable the scheme to comply with Treasury directions as to valuations.

#### **Employer cost cap**

8.—(1) The employer cost cap for this scheme is 11.6% of the pensionable earnings of members of the scheme.

(2) “Employer cost cap” has the same meaning as in section 12 of the 2013 Act.

#### **Cost of scheme exceeds margins**

9. The scheme actuary must give notice to the Secretary of State if the actuarial valuation shows that the cost of this scheme would be outside the margins specified in Treasury regulations pursuant to section 12(5) of the 2013 Act.

#### **Procedure for agreeing steps to achieve target cost**

10.—(1) This regulation applies if notice is given under regulation 9.

(2) The Secretary of State must make a request to the Scheme Advisory Board—

- (a) to consider the matter; and

(b) give advice to the Secretary of State as to the means by which the target cost is to be achieved.

(3) The Secretary of State must consider the advice and seek to reach agreement with the Scheme Advisory Board as to the means by which the target cost is to be achieved.

(4) In acting under paragraphs (2) and (3), the Secretary of State must specify the date before which—

- (a) the advice must be provided; and
- (b) agreement must be reached.

#### **No agreement reached**

**11.**—(1) This regulation applies if no agreement is reached as mentioned in regulation 10.

(2) If the costs of the scheme are outside the margins as mentioned in regulation 9, the Secretary of State must adjust the fraction specified in paragraph 13(3) of Schedule 9 so as to achieve the target cost.

#### **Approval mechanism**

**12.** An agreement under regulation 10 or an adjustment under regulation 11 must not be implemented unless—

- (a) the scheme actuary certifies that the agreement or adjustment (as the case may be) will have the effect of enabling the scheme to meet the target cost; and
- (b) the Treasury approves the agreement or adjustment.

#### **Target cost**

**13.** In regulations 10 to 12, “target cost” must be construed in accordance with section 12(5)(b) of the 2013 Act.

### CHAPTER 3

#### General

#### **Administrative matters**

**14.** Schedule 3 makes provision in relation to—

- (a) scheme accounts and information;
- (b) claims for, and payments of, benefits;
- (c) interest on late payments;
- (d) assignment, offset and forfeiture;
- (e) insolvency of persons entitled to benefits;
- (f) determination of questions;
- (g) taxation.

## PART 3

### Scheme membership

#### CHAPTER 1

##### Joining and leaving

##### **Joining and leaving the scheme**

**15.**—(1) Each person who is eligible to join this scheme pursuant to regulation 18 is included in the scheme—

- (a) automatically on commencing NHS employment;
- (b) subject to regulation 16, where the person has previously opted out of this scheme, on the date determined under paragraph 2 of Schedule 4, where that paragraph applies;
- (c) subject to regulation 16, where the person has previously opted out of this scheme and is a person to whom section 3 or 5 of the 2008 Act(4) applies—
  - (i) on that person’s automatic enrolment date; or
  - (ii) on that person’s automatic re-enrolment date, except where the notice referred to in paragraph 1 of Schedule 4 was given within the 12 months immediately preceding that date.

(2) A person who is included in this scheme may opt out at any time in accordance with paragraph 1 of Schedule 4.

(3) In this Chapter—

- (a) “the 2008 Act” means the Pensions Act 2008;
- (b) “the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(5).

(4) Paragraph (1) does not apply to a locum practitioner.

(5) A locum practitioner who wishes to join this scheme must make an application to the scheme manager in such form as the scheme manager requires.

(6) The application must not relate to a period of engagement which ended more than 10 weeks before the date of the application.

(7) If the scheme manager accepts an application under paragraph (5) the locum practitioner’s membership of this scheme takes effect on the date specified by the scheme manager.

##### **Re-joining the scheme**

**16.**—(1) Subject to paragraph (2), a person who has opted out of this scheme in accordance with paragraph 1 of Schedule 4 may re-join this scheme pursuant to paragraph 2 of that Schedule.

(2) A person may not re-join this scheme during any period of absence from work for any reason.

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(4) [2008 c.30](#). Section 3 was amended by sections 5 and 6 of the Pensions Act 2011 ([c.19](#)) and [S.I. 2014/623](#). Section 5 was amended by sections 4, 5 and 6 of the Pensions Act 2011 and [S.I. 2014/623](#), and prospectively amended by sections 37 and 38 of the Pensions Act 2014 ([c.19](#)).

(5) [S.I. 2010/772](#), as amended by [S.I. 2012/215](#), [1257](#), [1477](#) and [2691](#), [2013/2328](#), [2556](#) and [3115](#), and [2014/715](#).

### **Automatic enrolment legislation**

17.—(1) Regulations 15 and 16 do not apply to a person to whom sections 3, 5 or 8 of the 2008 Act and regulations 9 or 15 of the 2010 Regulations(6) applies (that is, a person who is subject to automatic enrolment or re-enrolment in this scheme as a qualifying scheme who does not wish to participate in it).

(2) Paragraph (1) does not affect the rights of such a person who subsequently joins or re-joins this scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.

## **CHAPTER 2**

### **Membership**

#### **Membership**

18.—(1) Subject to regulation 19, a person is eligible to join this scheme if the person is a health service worker and is—

- (a) employed by an NHS organisation listed in Part 1 of Schedule 5;
- (b) employed by a medical contractor or dental contractor listed in Part 2 of that Schedule;
- (c) an individual who is employed by an independent provider in circumstances described in paragraph (4);
- (d) an individual who is a medical practitioner or dental practitioner listed in Part 3 of that Schedule; or
- (e) who is employed by a determination employer: see Part 4 of that Schedule.

(2) Subject to regulation 19, a person is eligible to join this scheme if the person is—

- (a) an individual of a category or description listed in Schedule 6; and
- (b) a person in respect of whom the Secretary of State has made a determination under section 25(5) of the 2013 Act.

(3) Where such a determination is made, these Regulations apply to the person subject to any modification made by the Secretary of State by direction under section 25(8) of the 2013 Act.

(4) The circumstances are that the person—

- (a) performs services pursuant to an approved qualifying contract (see regulation 150(3)); and
- (b) satisfies the wholly or mainly condition (see regulation 150(4)).

(5) In paragraph (1), the reference to a person being employed does not include a reference to a person engaged under a contract for services.

(6) Where, in relation to a single employment or engagement for provision of services, a person is eligible to join this scheme by virtue of more than one of the sub-paragraphs of paragraphs (1) or (2), the scheme manager must determine which one sub-paragraph is to be used as the basis for membership.

#### **Restrictions on membership**

19.—(1) A person is not eligible to be a member of this scheme if the person—

- (a) is under the age of 16 or over the age of 75;
- (b) is eligible to be an active member of—

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(6) Regulation 9 was amended by regulation 5(1) and (6) of [S.I. 2013/2556](#).

- (i) a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972(7); or
  - (ii) a public service pension scheme established under section 1(2)(a) or 1(2)(d) of the 2013 Act,
- in respect of service in such a scheme and is such a member;
- (c) is, other than by virtue of regulation 6 of the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015(8), eligible to be an active member of the 1995 Section or the 2008 Section in respect of service in that scheme;
  - (d) is a pensioner member of the 1995 Section or the 2008 Section except so far as otherwise provided pursuant to the National Health Service Pension Scheme (Transitional and Consequential Provisions) Regulations 2015;
  - (e) holds an honorary appointment and is not at the same time otherwise entitled to join this scheme;
  - (f) is employed by a dental contractor but is not a dental practitioner;
  - (g) is employed by—
    - (i) a GMS practice;
    - (ii) a PMS practice; or
    - (iii) an APMS contractor,but does not assist the employer in the provision of services for the purposes of the GMS contract, PMS agreement or APMS contract (as the case may be);
  - (h) is a person—
    - (i) who—
      - (aa) becomes entitled to a Tier 2 IHP (see regulation 90); and
      - (bb) opts to exchange the Tier 2 IHP for a lump sum pursuant to regulation 109;or
    - (ii) to whom regulation 96(5)(b) applies.
- (2) Schedules 7 and 8 make provision in relation to other persons who are not eligible to become members of this scheme except as permitted by the Secretary of State.

### CHAPTER 3

#### Pensionable service

##### **Pensionable service**

- 20.**—(1) Pensionable service is the aggregate of the following periods—
- (a) a period of service in which a member (M) contributes to this scheme under regulation 30 or 31;
  - (b) a period of absence from service which counts as pensionable service under regulation 21; and
  - (c) a period of service credited to M as pensionable service under Part 7 (transfers).
- (2) M's pensionable service does not include—

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(7) 1972 c.11. Section 1 deals with pension schemes for civil servants and section 9 deals with pension schemes for teachers.

(8) S.I. 2015/95.

- (a) a period of service in respect of which an employing authority or the Secretary of State has paid contributions to another occupational pension scheme in respect of M;
  - (b) where M is a pensioner member or a deferred member, a period taken into account—
    - (i) in determining M's entitlement to the pension in payment or, as the case may be, the deferred pension; or
    - (ii) in calculating the amount of the pension;
  - (c) a period of service in which the Secretary of State's liability to provide benefits is discharged—
    - (i) by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act<sup>(9)</sup>;
    - (ii) under regulation 42 (effect of refund); or
    - (iii) by the payment of a transfer value payment on transfer out under Part 7 (transfers).
- (3) Paragraph (4) applies if—
- (a) the employment in which M is an active member ceases; and
  - (b) a payment is made in respect of untaken leave.
- (4) If this paragraph applies—
- (a) M'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 M's pensionable earnings for the period.
- (5) If M—
- (a) is a pensioner member; and
  - (b) is entitled to a pension under regulation 85 (partial retirement),
- paragraph (2)(b) applies only to so much of M's pensionable service as is mentioned in regulation 85(3)(a) (the specified percentage of the pensionable service in respect of which M is an active member on the election day).
- (6) For the purposes of calculating the length of a period of pensionable service—
- (a) a year is a period of 365 days;
  - (b) 29th February in any year is ignored;
  - (c) part of a day is treated as a whole day.

### **Absence from work**

- 21.**—(1) Paragraph (2) applies if a member (M) 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 M contributes to this scheme under regulation 30 or 31 in respect of the period of absence.

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(9) 1993 c.48. Section 55(2) was substituted by section 141(1) of the Pensions Act 1995 (c.26) and amended by section 18 of, and paragraph 7 of Schedule 2 to, the Welfare Reform and Pensions Act 1999 (c.30) and sections 15 and 27 of, and paragraphs 1 and 26 of Schedule 4 and Part 6 of Schedule 7 to, the Pensions Act 2007 (c.22).



- (3) Paragraph (4) applies if M—
  - (a) is on leave of absence;
  - (b) is not within paragraph (1); and
  - (c) contributes to this scheme by contributions made at the same intervals as those made by M before the absence.
- (4) The maximum period of leave that can be counted as pensionable service is—
  - (a) if M contributes for a continuous period of 6 months starting with the first day of M's leave of absence, 6 months;
  - (b) if M contributes for a continuous period of less than 6 months starting with that day, the period in respect of which M pays the contributions.
- (5) Paragraph (6) applies if M—
  - (a) has paid contributions for the period mentioned in paragraph (4)(a);
  - (b) remains on leave of absence that is not within paragraph (1); and
  - (c) at the same intervals as contributions made by M before the absence, contributes both member contributions under regulation 30 or 31 and employing authority contributions under regulation 33.
- (6) The maximum period of leave that can be counted as pensionable service is—
  - (a) if M contributes for a continuous period of 18 months starting immediately after the end of the period mentioned in paragraph (4)(a), 18 months; and
  - (b) if M contributes for a continuous period of less than 18 months starting immediately after the end of that period, the period in respect of which M pays the contributions.

### **Qualifying service**

- 22.**—(1) The qualifying service of a member (M) is the aggregate of the following periods—
- (a) M's pensionable service, except service mentioned in regulation 20(1)(c);
  - (b) a transfer in period;
  - (c) a transferred undertaking period;
  - (d) a period treated as qualifying service by virtue of paragraph (6);
  - (e) a period of relevant qualifying service in a connected scheme; and
  - (f) a period of service in respect of which M is a pensioner member in this scheme.
- (2) In determining a period of pensionable service for the purposes of paragraph (1)(a), paragraph (b) of regulation 20(2) must be ignored.
- (3) A transfer in period is the period equal to M's period as an active member in another occupational pension scheme (including a connected scheme) in relation to which a transfer value in respect of M's rights under the scheme has been accepted under Part 7.
- (4) A transferred undertaking period is the period of employment that qualified M for rights under another occupational pension scheme where—
- (a) M became an active member of this scheme on the transfer of M's employment to a new employer as the result of a transfer of undertaking to that employer; and
  - (b) no transfer payment in respect of those rights has been accepted under Part 7.
- (5) Paragraph (6) applies if M is employed on a casual basis or is a locum practitioner and, for a period not exceeding 3 months—

- (a) M ceases to pay contributions because of a break not exceeding that period in the employment in which M is an active member, but before the end of the period M re-enters the employment on the same basis as before the break; or
  - (b) M is not engaged as such a practitioner and so is not treated as being in pensionable service, but before the end of the period M is re-engaged as such a practitioner.
- (6) The period mentioned in paragraph (5) is treated as a period when M continues to be in qualifying service and—
- (a) M is not required to re-join the scheme on re-entering the employment or on being re-engaged; and
  - (b) if M is engaged as a locum practitioner, the period does not count as pensionable service as a practitioner.
- (7) Relevant qualifying service in a connected scheme is service that counts for the purposes of—
- (a) regulation C3 of the 1995 Regulations; or
  - (b) regulations 2.A.5 or 3.A.5 of the 2008 Regulations.

**Effect of break in pensionable service**

23.—(1) In the following table a break in a period of pensionable service of a member (M) in circumstances set out in column 1 has the effect described in column 2.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<b>Part 1</b>	
M leaves active membership, is neither qualified for a retirement pension pursuant to regulation 72 nor is a pensioner member because of rights resulting from that membership, then returns to active service	
1. The break— <ul style="list-style-type: none"> <li>(a) does not exceed one month; or</li> <li>(b) is due to a trade dispute (within the meaning of section 35(1) of the Jobseekers Act 1995(10)).</li> </ul> 2. No transfer payment is made to another scheme in respect of pensionable service before the break.                     3. It is immaterial if a refund of contributions is paid to M in respect of the period before the break.	The period of pensionable service before the break is treated as continuous with the period after the break.
1. The break does not exceed 5 years.                     2. No transfer payment is made to another scheme in respect of M’s pensionable service before the break.                     3. If a refund of contributions in respect of the period before the break is paid to M, it is repaid before the end of the period	The period of pensionable service before the break is treated as continuous with the period after the break.

(10) 1995 c.18.

<i>Column 1</i>	<i>Column 2</i>
of 6 months starting on the first day of pensionable service after the break.	
1. The break exceeds 5 years. 2. M may claim a refund of contributions in respect of pensionable service before the break.	The period of pensionable service before the break is not treated as continuous with the period after the break and does not count towards qualifying service.
<b>Part 2</b>	
M leaves active membership, is qualified for a retirement pension pursuant to regulation 72 but is not a pensioner member because of rights resulting from that membership, then returns to active service	
1. The break does not exceed 5 years. 2. No transfer payment is made to another scheme in respect of M's pensionable service before the break.	The period of pensionable service before the break is treated as continuous with the period after the break.
1. The break exceeds 5 years. 2. No transfer payment is made to another scheme in respect of M's pensionable service before the break.	The period of pensionable service before the break is not treated as continuous with the period after the break, but does count as qualifying service.

(2) In paragraph (1) a reference to the repayment of a refund of contributions includes the repayment of any interest on the contributions.

## CHAPTER 4

### Pension accounts

#### **Establishment of pension accounts**

**24.**—(1) The scheme manager must establish and maintain one or more of the following pension accounts for each member of this scheme in accordance with Schedule 9—

- (a) active member's account;
- (b) deferred member's account;
- (c) pensioner member's account;
- (d) additional pension account;
- (e) pension credit member's account.

(2) A pension account—

- (a) may be kept in any form the scheme manager considers appropriate; and
- (b) must specify the details required by these Regulations.

(3) References in these Regulations to any amount specified in a pension account are references to the amount that is required by these Regulations to be so specified and not, if different, the amount actually so specified.

#### **Closure of pension accounts on transfer out or repayment of balance of contributions**

**25.**—(1) All pension accounts relating to a member (other than a pension credit member's account) must be closed if—

- (a) a transfer payment is made in respect of the member's accrued rights under this scheme; or
  - (b) the member is repaid the balance of contributions under regulation 41.
- (2) Paragraph (1) does not require the scheme manager to close an account that includes amounts to which the transfer payment or the refund does not relate or is not attributable.
- (3) An account that is not closed because of paragraph (2) must be adjusted as the scheme manager considers appropriate to reflect the extinguishment of rights under this scheme.

### Calculation of amount of accrued pension

- 26.**—(1) For the purpose of a full retirement pension, the amount of accrued pension is calculated in accordance with paragraph 28 of Schedule 9.
- (2) For the purpose of a partial retirement pension, the amount of accrued pension is calculated in accordance with paragraph 29 of Schedule 9.
- (3) For the purpose of a deferred member's account, the amount of accrued earned pension is calculated in accordance with paragraph 30 of Schedule 9.

## PART 4

### Contributions

#### CHAPTER 1

#### Determination and payment

### Pensionable earnings

- 27.**—(1) The pensionable earnings of a member (M) are defined by the appropriate entry in the Table where—
- (a) column 1 applies an identifying letter to the group to which M belongs;
  - (b) column 2 describes M's employment in or engagement with a health service activity; and
  - (c) column 3 specifies the nature of the income derived by M from the employment or engagement.

**Table**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Group</i>	<i>Employment/Engagement</i>	<i>Income</i>
A	M is employed by an NHS organisation.	Salary, wages, fees and other regular payments made to M in respect of M's employment but not including— (a) bonuses; (b) payments made to cover expenses; (c) payments for overtime; or (d) pay awards or increases which are expressed by the Secretary of State to be non-consolidated.
B	M is employed by a medical contractor, a non-GP provider or a dental contractor.	
C	M is employed by— (a) a determination employer; or (b) an independent provider.	
D	M is— (a) a medical practitioner;	Practitioner income: see Schedule 10.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Group</i>	<i>Employment/Engagement</i>	<i>Income</i>
	(b) a dental practitioner; or (c) a non-GP provider.	

(2) M's pensionable earnings may be attributable to M belonging concurrently to more than one group in the Table.

(3) If M is a non-GP provider—

- (a) paragraph (2) does not apply;
- (b) if M derives income from more than one entity as a non-GP provider, M's practitioner income in respect of only one of those may be taken into account for the purpose of establishing M's pensionable earnings.

(4) If, in addition to an employment mentioned in paragraph (1), M holds an honorary office or appointment, a distinction award payable to M as a consequence of holding the office or appointment is treated—

- (a) where M is in one employment, as pensionable earnings of that employment;
- (b) where M is in two or more employments, as pensionable earnings of such of the employments as the scheme manager thinks appropriate.

(5) In paragraph (1), a practitioner is a person who is—

- (a) a fully registered person (within the meaning of section 55 of the Medical Act 1983<sup>(11)</sup>) who is not a GP registrar and is—
  - (i) a medical practitioner;
  - (ii) an ophthalmic practitioner; or
  - (iii) a locum practitioner; or
- (b) a dental practitioner.

### **Pensionable earnings: break in service**

**28.**—(1) Paragraph (3) applies to a member (M) if—

- (a) the absence condition is satisfied; and
- (b) the earnings used to calculate M's pensionable earnings under regulation 27 are reduced or cease.

(2) The absence condition is that M is absent from work because of—

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

(3) Amounts equal to the pensionable earnings that M would have received but for the absence are treated as having been paid to M.

<sup>(11)</sup> 1983 c.54. The definition of “fully registered person” has been amended by S.I. 2000/3041, 2006/1914, 2007/3101 and 2008/1774.

(4) Paragraph (3) does not apply to M as respects any period after the earnings used to calculate M's pensionable earnings under regulation 27 have ceased to be paid to M if—

- (a) M is neither a practitioner nor a non-GP provider; and
- (b) M is within paragraph (2)(a).

(5) For the purposes of regulations 27 to 31, amounts equal to reduced earnings to which paragraph (6) applies are treated as pensionable earnings.

(6) The reduced earnings are the amount to which the earnings used to calculate M's pensionable earnings under regulation 27 are reduced—

- (a) for any period while M is within paragraph (2);
- (b) for any period (period A) while M is within paragraph (2)(b) to (e) and during a period following that period (period B) whilst M continues to be within that paragraph and M's earnings are reduced to zero.

(7) For the purposes of paragraph (6)(b)—

- (a) pay received by a woman on maternity leave in respect of days during which she returns to work for the purpose of keeping in touch with the workplace must be ignored;
- (b) earnings reduced to zero in period B are treated as if they were reduced to the amount applicable to period A.

(8) During any period of absence which counts as pensionable service under regulation 21(4) or (6) (up to 24 months leave of absence with full contributions), amounts equal to the rate of M's pensionable earnings immediately before the absence are treated as pensionable earnings.

(9) This paragraph applies if M belongs to group D in regulation 27(1) and M's earnings have been reduced or ceased—

- (a) if M is one of a number of practitioners or non-GP providers who have elected under paragraph 4(4) of Schedule 10, each practitioner's or non-GP provider's pensionable earnings are calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings for the period of 12 months ending immediately before M's earnings were reduced or ceased;
- (b) in any other case, M is treated as having continued to receive the same average rate of pensionable earnings as during that period.

(10) If the earnings used to calculate M's pensionable earnings cease during a period of absence specified in paragraph (2)—

- (a) a practitioner or non-GP provider within paragraph (2)(a) is treated as having continued in pensionable employment for a period of 12 months starting on the date on which M's earnings ceased and M is not treated as having left pensionable employment until the end of that period;
- (b) a practitioner or non-GP provider falling within paragraph (2)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraphs (5) and (6) must continue to pay contributions at that rate, but no refund of contributions or other benefit is payable until M actually leaves pensionable employment;
- (c) a member other than a practitioner or non-GP provider is treated (subject to paragraph (7)) as having left pensionable employment, but no refund of contributions or other benefit is payable until M actually leaves pensionable employment.

(11) For the purposes of paragraph (10)(a)—

- (a) during the 12 month period, the practitioner's or non-GP provider's pensionable earnings are to be calculated in accordance with paragraph (9)(a) or (b);

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

(12) For the purposes of paragraph (10)(b), the rate of contributions payable is the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (5) and (6)(a) if the practitioner's or non-GP provider's reduced earnings had excluded earnings for a day during which the practitioner or non-GP provider, whilst on maternity leave, returned to work for the purpose of keeping in touch with the workplace.

(13) If M fails to pay contributions which are required to be paid in respect of a period of absence to which this regulation applies—

- (a) M is treated as having left pensionable employment; but
- (b) no refund of contributions or other benefit is payable until M actually leaves pensionable employment.

(14) Benefits payable on the death of a member whose earnings ceased during a period of absence to which paragraph (2) applies are calculated as if the member had died in pensionable employment the day before the earnings ceased.

#### **Pensionable earnings: more than one employment**

**29.**—(1) This regulation applies if, at any time, a member (M) is in receipt of pensionable earnings in respect of two or more employments each of which is attributable to M belonging to any of groups A to C in the table in regulation 27.

(2) If it appears to the scheme manager that the total pensionable earnings for the employments exceeds the comparable amount, the excess is ignored for the purposes of this Part.

(3) The comparable amount is the amount that would be the pensionable earnings for a single comparable whole-time employment, not held concurrently with any other employment, under which services of the kinds performed in the two or more employments are performed.

(4) Each employing authority of M's must provide the scheme manager with such information relating to M's employment as the scheme manager requires for the purpose of enabling the scheme manager to determine what is a single comparable whole-time employment.

(5) In determining what is a single comparable whole-time employment, the scheme manager must have regard to guidance issued by the scheme actuary for the purpose.

(6) It is immaterial whether one or more of the employments mentioned in paragraph (1)—

- (a) is with the same employing authority; or
- (b) is treated as a part-time employment.

(7) An employment includes a contract to perform services.

#### **Members' contributions: employees**

**30.**—(1) This regulation applies in relation to an active member (M) who belongs to group A, B or C in regulation 27(1).

(2) M must make contributions to this scheme ("members' contributions")—

- (a) in respect of M's pensionable earnings;
- (b) at M's contribution rate for the scheme year in question.

(3) Where paragraph 2 of Schedule 11 (determination of pensionable earnings for the purposes of setting a contribution rate for members) applies, M's contribution rate for each of the scheme years 2015/16 to 2018/19 is the percentage specified in column 2 of the following table in respect

of the corresponding pensionable earnings band specified in column 1 into which M's pensionable earnings fall.

**Table Scheme Years 2015/16 to 2018/19**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5.0%
£15,432 to £21,477	5.6%
£21,478 to £26,823	7.1%
£26,824 to £47,845	9.3%
£47,846 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%

(4) The Secretary of State must—

- (a) with the consent of the Treasury; and
- (b) having considered the advice of the scheme actuary,

determine the pensionable earnings bands and contribution percentage rates in the Table set out in this regulation in respect of each subsequent scheme year.

(5) M's employing authority must deduct member contributions from M's pensionable earnings and pay them to the scheme manager not later than the 19th day of the month following that in which the earnings were paid to M.

(6) If M's employing authority has failed to deduct contributions pursuant to paragraph (5), the scheme manager may recover the amount of unpaid contributions by deduction from benefits payable to, or in respect of, M if the scheme manager has notified M of an intention to do so.

#### **Members' contributions: practitioners and non-GP providers**

**31.**—(1) This regulation applies to an active member (M) who belongs to group D in regulation 27(1).

(2) M must make contributions to this scheme ("members' contributions")—

- (a) in respect of M's pensionable earnings;
- (b) at M's contribution rate for the scheme year in question.

(3) M's contribution rate for each of the scheme years 2015/16 to 2018/19 is the percentage specified in column 2 of the table in paragraph (9) ("the Table") in respect of the corresponding pensionable earnings band specified in column 1 of the Table into which M's pensionable earnings fall.

(4) The Secretary of State must—

- (a) with the consent of the Treasury; and
- (b) having considered the advice of the scheme actuary,

determine the pensionable earnings bands and contribution percentage rates specified in the Table in respect of each subsequent scheme year.



(5) In determining members' contributions payable in accordance with this regulation, a host Board must take account of pensionable earnings from all practitioner service, including such pensionable earnings determined by another host Board.

(6) An employing authority that is not a host Board must, in respect of pensionable earnings it pays to M, take advice from a relevant host Board in determining the contributions payable in accordance with this regulation.

(7) If M 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, the authority must—

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

(8) In any other case, M must pay members' contributions to the host board not later than the 7th day of the month following the month in which the earnings were paid.

(9) The Table—

**Table: Scheme Years 2015/16 to 2018/19**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5.0%
£15,432 to £21,477	5.6%
£21,478 to £26,823	7.1%
£26,824 to £47,845	9.3%
£47,846 to £70,630	12.5%
£70,631 to £111,376	13.5%
£111,377 to any higher amount	14.5%

(10) Regulations 38 and 39 and Schedule 12 make provision supplementary to this regulation and references in those regulations to “the Table” must be construed in accordance with paragraph (3).

### **Members' contributions: redundancy**

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

- (a) a member's (M) employment is terminated by reason of redundancy;
- (b) M will become entitled to payment of a pension under regulation 82 on the entitlement day for a premature retirement pension;
- (c) the additional contribution option applies to M; and
- (d) unless M pays an additional contribution as mentioned in paragraph (2), the amount of M's pension would be reduced pursuant to paragraph 7(5) of Schedule 13.

(2) M may pay such additional contribution as the scheme manager (having regard to the advice of the scheme actuary) determines will be sufficient to meet the cost of the pension insofar as that is not met by the contribution paid by M's employing authority under regulation 35.

(3) For the purposes of paragraph (2), the scheme manager must provide M's employing authority with such information as will enable the employing authority to notify M as to the effect that paying contributions of any particular amount would have on the amount of the pension payable to M.

(4) The amount of the additional contribution payable pursuant to paragraph (2) must be—

- (a) not less than £500 (or such other figure as the scheme manager thinks appropriate);
- (b) a whole number of pounds divisible by £10.

(5) For the purposes of paragraph (4)—

- (a) if the insufficiency mentioned in paragraph 7(4) of Schedule 13 is less than £500, sub-paragraph (a) is ignored;
- (b) if it is necessary to do so to comply with sub-paragraph (b), the figure must be rounded down to the nearest whole number of pounds divisible by £10.

(6) If M decides to pay an additional contribution, the amount of the contribution must be paid to M's employing authority in sufficient time to enable the authority to remit the payment to the scheme manager at the same time as the authority pays the contribution it is required to pay pursuant to regulation 35.

(7) The additional contribution option applies if the terms and conditions of M's employment entitle M optionally to make an additional contribution towards the cost of paying the pension if the lump sum payment is insufficient to meet that cost in full.

### **Contributions by employing authorities**

**33.**—(1) The employing authority of an active member of this scheme must contribute to the scheme in respect of the pensionable earnings of the member at the employing authority's standard rate: 14.3%.

(2) Paragraph (3) applies if—

- (a) during the same period a person who belongs to any of groups A to C in the table in regulation 27(1) holds more than one employment (whether under a contract of service or for services) with an employing authority; and
- (b) is an active member of this scheme in respect of each employment.

(3) This regulation and regulations 34 and 35 apply in respect of each employment as if it were the only employment held by the person.

(4) The Secretary of State may direct that for the purposes of this Part, "employing authority" includes one or more of the following—

- (a) the transferee under a transfer of staff order pursuant to—
  - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act<sup>(12)</sup>;
  - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act<sup>(13)</sup>;
- (b) a successor, transmittee or assignee of all or part of an employing authority's business or functions;
- (c) the last employing authority of a person to whom these Regulations apply.

(12) 2006 c.41. Paragraph 29(3) of Schedule 4 was amended by section 55(1) of, and paragraphs 22(1) and (9) of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

(13) 2006 c.42. Paragraph 8 of Schedule 3 was amended by section 297 of, and paragraphs 12 and 40(1) and (5) of Schedule 21 to, the Health and Social Care Act 2012.

(5) The employing authority's standard rate contribution must be paid to the scheme manager not later than the 19th day of the month following that in which the member is paid the pensionable earnings to which the contribution relates.

(6) A member's employing authority is determined in accordance with the following table where column 1 describes the nature of the member's engagement in the provision of health services and column 2 identifies the employing authority relating to that engagement.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Nature of engagement</i>	<i>Employing authority</i>
Employment by an NHS organisation	The NHS organisation
Employment by a GMS practice, a PMS practice or an APMS contractor or OOH provider	The GMS practice, PMS practice or APMS contractor or OOH provider in question
Employment by a determination employer	The determination employer
Employment by an independent provider	The independent provider
Medical practitioner employed by a medical contractor or non-GP provider	The host Board
Medical contractor or non-GP provider (including an ophthalmic medical practitioner with a GOS contract)	The host Board
Dental practitioner or foundation trainee providing services to a dental contractor	The host Board
Dental contractor	The host Board

(7) Despite paragraph (1), employing authority contributions for—

- (a) a medical practitioner employed by a medical contractor or non-GP provider must be paid by the medical contractor or non-GP provider (as the case may be);
- (b) a medical contractor (including an ophthalmic medical practitioner with a GOS contract) or a non-GP provider must be paid by the medical contractor or non-GP provider (as the case may be).

(8) Contributions payable by an employing authority under regulation 48(3) or 57 for a medical practitioner employed by a medical contractor or non-GP provider must be paid by the medical contractor or non-GP provider (as the case may be) rather than the host Board.

#### **Employing authority contributions: interests of efficiency**

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

- (a) a member's (M) employment is terminated by M's employing authority in the interests of the efficient discharge of the employing authority's functions; and
- (b) M will become entitled to payment of a pension under regulation 81 on the entitlement day for a premature retirement pension.

(2) The employing authority must make a contribution to the scheme manager in respect of the amount the scheme manager determines is required to meet the cost of paying the premature retirement pension under regulation 81.

- (3) Paragraph (4) applies if—
- (a) a pension becomes payable to M under regulation 81 in respect of the termination of M's employment with an employing authority (the "first authority"); and
  - (b) M elects that at the same time a pension also becomes payable to M in respect of pensionable service with one or more other employing authorities.
- (4) The first authority must also make any additional contribution for which the other employing authority or authorities would be liable in accordance with paragraph (2) if the other authority or authorities had terminated M's employment as mentioned in paragraph (1)(a).
- (5) 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 Chapter 5 of Part 4 (additional pension).
- (6) An employing authority must pay contributions under this regulation by a single payment made within one month of the date on which the pension under regulation 81 becomes payable.
- (7) The scheme manager, on the advice of the scheme actuary, must determine—
- (a) the costs mentioned in paragraph (2);
  - (b) the amount of the payment mentioned in paragraph (4).

#### **Employing authority contributions: redundancy**

- 35.**—(1) This regulation applies if—
- (a) a member's (M) employment is terminated by reason of redundancy; and
  - (b) M will become entitled to payment of a pension under regulation 82 on the entitlement day for a premature retirement pension.
- (2) M's employing authority must make a single lump sum contribution to the scheme manager of the relevant amount.
- (3) The contribution must be paid—
- (a) if the additional contribution option applies, not less than one month before the entitlement day (see regulation 83);
  - (b) in any other case, within one month of the date on which the pension under regulation 82 became payable.
- (4) The relevant amount is—
- (a) if the additional contribution option applies, whichever is the lesser of—
    - (i) the amount the scheme manager determines is required to meet the cost of paying the premature retirement pension under regulation 82; and
    - (ii) the amount the employing authority would otherwise be required to pay to M in consequence of M's redundancy;
  - (b) in any other case, the amount determined under sub-paragraph (a)(i).
- (5) The reference to the additional contribution option must be construed in accordance with regulation 32(7).
- (6) Paragraph (7) applies if—
- (a) a pension becomes payable to M under regulation 82 in respect of the termination of M's employment with an employing authority (the "first authority"); and
  - (b) M elects that at the same time a pension also becomes payable to M in respect of pensionable service with one or more employing authorities.

(7) The first authority must also make any additional contribution for which the other employing authority or authorities would be liable in accordance with paragraph (2) if the other authority or authorities had terminated M's employment as mentioned in paragraph (1)(a).

(8) In making a determination for the purposes of paragraph (4)(a)(i), the scheme manager must have regard to the advice of the scheme actuary.

### **Interest and administration charges: late paid contributions**

**36.**—(1) There is a chargeable event if an employing authority fails to pay—

- (a) the contributions it is required to pay under regulation 30, 31, 33, 34, 35, 48 or 57;
- (b) on or before the date specified in the regulation concerned.

(2) Where there is a chargeable event, the scheme manager may determine what amount of contributions are unpaid having regard to—

- (a) the amount of contributions historically paid at a chargeable event by that employing authority;
- (b) any reasons or explanation provided by the employing authority for the change in the amount of contributions (if any) it has paid at such an event;
- (c) any other factors that the scheme manager considers relevant.

(3) Where there is a chargeable event, the employing authority is liable to pay—

- (a) standard rate interest on the amount of unpaid contributions constituting that event; and
- (b) an administration charge in respect of each such event.

(4) Where the scheme manager becomes aware of a chargeable event, the scheme manager must give the employing authority a written notice specifying—

- (a) the date of the chargeable event;
- (b) the amount of unpaid contributions determined under paragraph (2);
- (c) the amount of interest at the standard rate payable in respect that event;
- (d) the amount of administration charge payable in respect of it; and
- (e) that payment of the amounts referred to in paragraphs (c) and (d) is to be made before the end of the period of 1 month starting with the date of the notice and that failure to do so incurs further interest and administration charges.

(5) An amount payable by way of interest or payable by way of an administration charge is to be paid as a single lump sum unless the scheme manager—

- (a) considers the case to be exceptional; and
- (b) considers it appropriate for all, or part, of the amount to be paid over a period and by a number of instalments determined by the scheme manager.

(6) Where the scheme manager considers the case to be exceptional, nothing in the preceding paragraphs prevents the scheme manager from waiving all or any part of the amount of interest, or all or any administration charges, payable.

(7) The standard rate of interest in respect of arrears for the scheme year 2015/2016 and subsequent years is the rate of the consumer prices index for the month of February immediately preceding the scheme year in which the chargeable event arose plus 3% compounded at annual intervals.

(8) The administration charge in respect of arrears for the scheme year 2015/2016 and subsequent years is £75.

(9) In any particular case the Secretary of State may direct that, for the purposes of this regulation, “employing authority” includes one or more of—

- (a) the transferee under a transfer of staff order pursuant to—
  - (i) in the case of England, section 28(4)(b) of, or paragraph 29(3) of Schedule 4 to, the 2006 Act<sup>(14)</sup>;
  - (ii) in the case of Wales, section 22(4)(b) of, or paragraph 8 of Schedule 3 to, the 2006 (Wales) Act<sup>(15)</sup>;
- (b) a successor, transmittee or assignee of all or part of an employing authority’s business or functions.

(10) In paragraph (7), “consumer prices index” means the all item consumer prices index published by the UK Statistics Authority.

### **Members’ contributions: records and estimates**

**37.**—(1) An employing authority must, in respect of a person, keep a record of—

- (a) contributions paid under regulation 30, 48, 62 or 64;
- (b) contributions due under regulation 30, 48, 62 or 64, but unpaid;
- (c) contributions paid under regulation 33;
- (d) contributions due under regulation 33, but unpaid;
- (e) hours or sessions of service if the employment is not whole-time employment;
- (f) pensionable earnings;
- (g) absences from work referred to in regulation 21;
- (h) starting and termination of pensionable employment;
- (i) reasons for termination of pensionable employment.

(2) The record must be in a manner approved by the scheme manager.

(3) Unless the scheme manager waives the requirement, an employing authority must provide a composite statement in respect of the matters referred to in paragraph (1) in respect of all scheme members to the scheme manager before the end of the period of 2 months starting with the end of each scheme year.

(4) Where—

- (a) an employing authority has provided information in accordance with paragraph (3); and
- (b) there is a change to the information,

the authority must, before the end of the period of one month after the change, provide the scheme manager with the revised information.

(5) An employing authority must provide to the scheme manager in respect of each scheme year details of the total contributions paid for all scheme members under regulations 30, 33, 62 and 64 and the details must be provided—

- (a) before the end of the period of 2 months after a request for the information is made;
- (b) in a manner required by the scheme manager.

(6) Where—

<sup>(14)</sup> 2006 c.41. Paragraph 29(3) of Schedule 4 was amended by section 55(1) of, and paragraphs 22(1) and (9) of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

<sup>(15)</sup> 2006 c.42. Paragraph 8 of Schedule 3 was amended by section 297 of, and paragraphs 12 and 40(1) and (5) of Schedule 21 to, the Health and Social Care Act 2012.

- (a) an employing authority has provided the information requested in paragraph (5); and
- (b) there is a revision to the total contributions made,

the authority must, before the end of the period of one month after the revision, provide the scheme manager with the revised total.

(7) An employing authority must, in respect of each scheme year, provide to the scheme manager a statement of estimated total contributions under regulations 30, 33, 48, 62 and 64—

- (a) not later than one month before the start of the scheme year;
- (b) in a manner required by the scheme manager.

### **Members' contributions: supplementary: medical practitioners and non-GP providers**

**38.**—(1) This regulation applies to a member (M) who belongs to group D in regulation 27(1) by virtue of being—

- (a) a medical practitioner; or
- (b) a non-GP provider.

(2) Paragraph (3) applies if, in respect of a scheme year, M—

- (a) has certified M's pensionable earnings in accordance Part 1 of Schedule 12 and forwarded a record of the earnings to the host Board; or
- (b) was not required to certify M's earnings in accordance with Part 1 of Schedule 12 but the host Board has the figure that represents M's pensionable earnings for that year.

(3) M's contributions payable for the scheme year in question are those specified in column 2 of the Table in respect of the amount of pensionable earnings referred to in column 1 of the Table which corresponds to the aggregate of—

- (a) certified or final pensionable earnings from all group D sources uprated according to the formula:

$$\frac{PE}{NDPS} \times 365$$

where—

PE is the certified or final amount of M's pensionable earnings from all group D sources for the year;

NDPS is the number of days of group D service from the date M's service commenced in the scheme year to the end of the scheme year; and

- (b) any additional pensionable earnings M is treated as having received during an absence from work in accordance with regulation 28.

(4) If paragraph (3) does not apply to M in respect of a scheme year, M must pay contributions at the rate in column 2 of the Table on the basis of whichever of the following the host Board considers the most appropriate in the circumstances—

- (a) an amount of M's earnings that has been agreed between M and the host Board;
- (b) an amount of M's earnings that corresponds to M's most recent certified or final pensionable earnings referred to in paragraph (2); or
- (c) an amount of M's earnings that corresponds to the host Board's estimate of M's pensionable earnings from all group D sources for that year.

(5) If paragraph (4) applies to M in respect of a scheme year and paragraph (2)(a) or (b) is subsequently satisfied in respect of that year, M must pay contributions at the rate determined in accordance with paragraph (3).

(6) A host Board may adjust M's contribution rates for a scheme year determined in accordance with paragraph (4)—

- (a) by agreement between M and the host Board; or
- (b) without such agreement, if the host Board is satisfied that M's pensionable earnings will exceed the amount used to so determine the contribution rate.

(7) If M concurrently belongs both to group D and to any of groups A to C in regulation 27(1)—

- (a) contributions payable in respect of M's service for the purposes of group D must be determined under this regulation; and
- (b) contributions payable in respect of M's service for the purposes of any of groups A to C must be determined under regulation 30.

(8) In the application of this regulation to a non-GP provider who derives income from more than one group D source, a reference to all group D sources must be construed as a reference to such one of those sources as the non-GP provider specifies for the purposes of this regulation.

### **Members' contributions: supplementary: dental practitioners**

**39.**—(1) This regulation applies to a member (M) who belongs to group D in regulation 27(1) by virtue of being a dental practitioner.

(2) Paragraph (3) applies if, in respect of a scheme year, M—

- (a) has reconciled or certified M's pensionable earnings in accordance with Part 1 of Schedule 12 and forwarded a record of those earnings to the host Board; or
- (b) was not required to reconcile or certify M's earnings in accordance with Part 1 of Schedule 12, but the host Board has the figure that represents M's pensionable earnings for the scheme year.

(3) M's contributions payable for the scheme year in question are those specified in column 2 of the Table in respect of the amount of pensionable earnings referred to in column 1 of the Table which corresponds to the aggregate of—

- (a) reconciled, certified or final pensionable earnings from all group D sources uprated according to the formula:

$$\frac{PE}{NDPS} \times 365$$

where—

PE is the reconciled, certified or final amount of the dental practitioner's pensionable earnings from all group D sources for the year;

NDPS is the number of days of dental practitioner service from the date the dental practitioner service commenced in the scheme year to the end of the scheme year; and

- (b) any additional pensionable earnings M is treated as having received during an absence from work in accordance with regulation 28.

(4) If paragraph (3) does not apply to M in respect of a scheme year, M must pay contributions at the rate in column 2 of the Table on the basis of whichever the host Board considers the most appropriate in the circumstances—

- (a) the amount of M's earnings that has been agreed between the host Board and M;
- (b) the amount of M's earnings that correspond to M's most recent certified or final pensionable earnings referred to in paragraph (2); or



(c) the amount of M's earnings that corresponds to the host Board's estimate of M's pensionable earnings from all group D sources for the year uprated in accordance with the formula in paragraph (3)(a).

(5) If paragraph (4) applies to M in respect of a scheme year, and paragraph (2)(a) or (b) is subsequently satisfied in respect of that year, M must pay contributions at the rate determined in accordance with paragraph (3).

(6) A host Board may adjust M's contribution rates for a scheme year determined in accordance with paragraph (4)—

- (a) by agreement between M and the host Board; or
- (b) without such agreement, if the host Board is satisfied that M's pensionable earnings will exceed the amount used to so determine the contribution rate.

## CHAPTER 2

### Refund: short service

#### Eligibility for refund

**40.**—(1) Contributions made by a member (M) must be repaid to M if—

- (a) the 1993 Act condition applies; or
- (b) the short service condition applies.

(2) The “1993 Act condition” is that—

- (a) Chapter 5 of Part 4 of the 1993 Act(**16**) applies to M; and
- (b) the repayment is made in accordance with that Chapter.

(3) The short service condition applies if—

- (a) M does not qualify for benefits under regulation 72;
- (b) M is not a pensioner member;
- (c) M ceases to be an active member;
- (d) the 1993 Act condition does not apply to M; and
- (e) M makes a claim in writing to the scheme manager for the repayment.

#### Amount of refund

**41.**—(1) The amount of a repayment to a member (M) pursuant to regulation 40 is—

- (a) if the 1993 Act condition applies, the amount to which M is entitled to be paid pursuant to Chapter 5 of Part 4 of that Act, less the appropriate deductions;
- (b) if the short service condition applies, an amount equal to the sum of the contributions paid by M, less the appropriate deductions.

(2) The appropriate deductions are—

- (a) so much of the contributions equivalent premium paid in respect of M as is permitted pursuant to section 61 of the 1993 Act(**17**); and

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**(16)** Chapter 5 of Part 4 deals with early leavers: cash transfer sums and contribution refunds.

**(17)** Section 61 has been amended by section 151 of, and paragraph 55 of Schedule 5 to, the Pensions Act 1995 (c.20), section 56 of, and paragraph 5(2) of Schedule 5 to, the Child Support, Pensions and Social Security Act 2000 (c.19) and section 319(1) of, and paragraphs 9 and 12 of Schedule 12 to, the Pensions Act 2004 (c.35).

- (b) an amount equal to the income tax payable under section 205 of the 2004 Act<sup>(18)</sup> (short service lump sum charge) as a result of the repayment.
- (3) M is entitled to interest on the amount of the repayment unless M's pensionable service ceases because M's employment is terminated—
  - (a) pursuant to M's contract of employment;
  - (b) at M's request; or
  - (c) by reason of misconduct or inefficiency.
- (4) The rate of interest is 2.5% per year calculated on a compound basis with yearly rests.
- (5) Interest is payable in respect of the period starting on 1st April following the day when M started to pay contributions and ending on the day M leaves pensionable service.
- (6) Paragraphs (4) and (5) do not apply if—
  - (a) regulation 40(1)(a) applies; and
  - (b) M is entitled to a greater amount of interest under Chapter 5 of Part 4 of the 1993 Act.
- (7) So far as contributions paid by M were paid under another scheme and were included in a transfer payment to this scheme—
  - (a) interest for the period before the transfer period was made is calculated in accordance with the other scheme (subject to any enactment applicable to the transfer); and
  - (b) paragraphs (4) and (5) do not apply as respects that period.

### **Effect of refund**

- 42.**—(1) If a repayment of contributions is made pursuant to regulation 40, the rights of the member (M) under this scheme are extinguished unless—
- (a) M or M's spouse or civil partner is entitled to a guaranteed minimum pension under the scheme; and
  - (b) no contributions equivalent premium has been paid.
- (2) Paragraph (1) does not apply if—
- (a) M again becomes a member of this scheme; and
  - (b) before the end of the period of 6 months starting on the date M again becomes a member, M repays to the scheme manager the contributions together with any interest paid in respect of them.

## **CHAPTER 3**

### **Buy-out: actuarial reduction**

#### **Eligibility to make buy-out election**

- 43.**—(1) A member (M) who has a prospective normal pension age over 65 may elect to pay contributions to buy out the actuarial reduction ("buy-out election") in accordance with this Chapter.
- (2) A buy-out election ceases to have effect when the earliest of the following occurs—
- (a) M reaches normal pension age;
  - (b) a retirement pension other than a partial retirement pension becomes payable to M;
  - (c) M revokes the election or is taken to revoke the election.

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<sup>(18)</sup> Section 205 has been amended by section 219(1) of, and paragraphs 119 and 121 of Schedule 46 to, the Finance Act 2013 (c.29) and by article 3 of S.I. 2010/536.

- (3) A buy-out election may only be made before the end of the period of 3 months after—
  - (a) M enters pensionable service under this scheme; or
  - (b) the beginning of a subsequent scheme year.
- (4) When making a buy-out election, M must—
  - (a) be in pensionable service; and
  - (b) not have reached normal pension age.
- (5) An election under this regulation may be made by M on only one occasion.

### **Making and varying a buy-out election**

**44.**—(1) A buy-out election made by a member (M) must state the number of years in respect of which the actuarial reduction is to be bought out.

- (2) The number of years—
  - (a) must not exceed 3 or (if less) the number of years from the date of M’s 65th birthday until M’s prospective normal pension age; and
  - (b) must be a whole number of years unless—
    - (i) M’s prospective normal pension age is expressed otherwise than as a whole number of years; or
    - (ii) the scheme manager (having considered the advice of the scheme actuary) considers in M’s circumstances it is unreasonable to restrict the period to whole years.
- (3) A buy-out election must be made by written notice to the scheme manager.
- (4) The notice of election must—
  - (a) if M is a member of this scheme by virtue of more than one employment, specify the names of each of the employing authorities; and
  - (b) be in such form and provide such other information as the scheme manager requires.
- (5) The scheme manager may ask M to provide further information.
- (6) M may by written notice to the scheme manager vary a buy-out election to increase the period for which the actuarial reduction is bought out at any time before a retirement pension becomes payable to M.
- (7) Paragraph (6) is subject to paragraph (2) and regulations 43(3) and (4).
- (8) Regulation 46 applies to a notice under paragraph (6) as it applies to an election under regulation 43(1) and, for the purposes of this paragraph, the amount found under regulation 46(2) includes the value of any increase mentioned in paragraph (6).

### **Accepting a buy-out election**

**45.**—(1) The scheme manager may accept a buy-out election by giving written notice to the person who made the election (M).

- (2) The notice must state—
  - (a) the rate of the monthly payments determined under regulation 47; and
  - (b) the date on which M reaches prospective normal pension age.
- (3) A buy-out election takes effect when M receives notice that the scheme manager has accepted the election.

(4) The buy-out period is the number of scheme years starting with (and including) the scheme year in which the buy-out election takes effect and ending with (and including) the scheme year in which the earliest of the following occurs—

- (a) M revokes or is taken to have revoked the election;
- (b) M ceases to be a member of the scheme;
- (c) M reaches normal pension age.

(5) The buy-out period does not include a scheme year in which payment of buy-out contributions is suspended by virtue of regulation 49.

### **Overall limit on extra pension**

**46.**—(1) The scheme manager must not accept an election under regulation 43(1) from a member if—

- (a) the member has made an election under regulation 55; and
- (b) paragraph (2) applies.

(2) This paragraph applies if the value of the actuarial reduction bought out exceeds the greater of the first and second amounts in paragraph (3).

(3) In this paragraph—

- (a) the first amount is  $B - A$ ;
- (b) the second amount is  $L - A$ ,

where—

B is the maximum potential value (determined having regard to the advice of the scheme actuary and the limits in regulation 44(2)) at the date of the election under regulation 43 (in terms of annual pension) of the reduction for the period for which the buy-out has effect;

L is the overall limit for the purposes of regulation 61; and

A is the value (in terms of annual pension) of any additional pension purchased or being purchased by the member under this scheme.

(4) A reference to the value of an additional pension is, in the case of a member who has made more than one election under regulation 55, a reference to the aggregate value of all the additional pensions in respect of which the member has made an election.

### **Determination of contributions payable**

**47.**—(1) The scheme manager must, after consultation with the scheme actuary, determine the rate of the monthly payments to be paid in respect of a buy-out election.

(2) The scheme manager—

- (a) may determine the rate of the monthly payments by reference to the length of the period between the date of the buy-out election and the date when the member will reach prospective normal pension age; and
- (b) may exercise the functions under this paragraph so as to re-determine the rate of the monthly payments during that period.

(3) Unless the scheme manager re-determines the rate, monthly payments following a gap in service not exceeding 5 years are the same as before the gap.

### **Payment of buy-out contributions**

**48.**—(1) A member (M) must—

- (a) make the first monthly payment within 2 months after the end of the month in which a buy-out election is accepted; and
- (b) continue to make the monthly payments until the end of the period mentioned in regulation 47(2)(a).

(2) If the scheme manager re-determines the amount of the monthly payment during the period mentioned in regulation 47(2)(a), M must pay the re-determined amount from—

- (a) the start of the next scheme year; or
- (b) such later date as the scheme manager specifies.

(3) If the member’s employing authority agrees to pay any or part of the contributions, the amount payable by the employing authority must be paid at the time the member would otherwise have been required to pay them.

(4) For the purpose of determining the amount of contributions payable during any period in which M’s pensionable earnings are reduced as mentioned in regulation 28, the reduction in pensionable earnings must be disregarded.

(5) In this regulation, “the first monthly payment” includes any monthly payment due in arrears for the period between the start of the scheme year in which the buy-out election is accepted and the date of that first payment.

### **Suspension of buy-out: hardship**

**49.**—(1) The scheme manager may, at the request of the member (M), agree to the suspension of the payment of contributions due under regulation 48 if the scheme manager is satisfied that M’s circumstances are such that M will suffer hardship if the payments are not suspended.

(2) A period of suspension is permitted only if—

- (a) there has been no previous suspension; or
- (b) if there has been an earlier suspension, contributions have been paid for not less than a full scheme year since the earlier suspension ended.

(3) If the scheme manager agrees to the suspension, paragraph (4) applies unless—

- (a) not later than one year after the request under paragraph (1) is made M applies to resume making contributions; and
- (b) M resumes making the contributions at the start of the following scheme year.

(4) If this paragraph applies—

- (a) M is taken to have revoked the buy-out election; and
- (b) M is not entitled to make any other buy-out election under the scheme.

(5) Paragraph (6) applies if—

- (a) the scheme manager agrees to the suspension of payment of contributions by M; and
- (b) M’s employing authority has agreed to pay contributions as mentioned in regulation 48(3).

(6) Payment of contributions by M’s employing authority is suspended for the same period as the payment of contributions by M is suspended.

### **Revoking a buy-out election**

**50.**—(1) A member (M) may revoke a buy-out election at any time before the end of the period mentioned in regulation 47(2)(a).

(2) The scheme manager may revoke M's buy-out election if M does not pay contributions for a period of 12 months.

(3) If a buy-out election is or is taken to have been revoked, M's monthly payments cease to be payable on the date of revocation.

(4) If, at the revocation date, the buy-out period during which the contributions were paid was less than 12 months—

- (a) the contributions must be re-paid to M; and
- (b) the buy-out election ceases to have effect.

(5) If, at the revocation date, the buy-out period during which the contributions were paid is 12 months or more—

- (a) contributions paid during the scheme year in which the election is revoked must be repaid to M; and
- (b) the buy-out period ends at the end of the previous scheme year.

(6) The revocation date is the date the buy-out election is, or is taken to have been, revoked.

## CHAPTER 4

### Allocation

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

**51.**—(1) A member (M) may elect to allocate a part of the annual amount of M's pension for the provision of a pension after M's death for not more than one individual who is—

- (a) M's spouse or civil partner; or
- (b) a dependant of M (within the meaning of paragraph 15(2) or (3) of Schedule 28 to the 2004 Act<sup>(19)</sup>).

(2) An election under this regulation may be made only—

- (a) at the time M claims the pension under paragraph 4 of Schedule 3; and
- (b) if M is not already entitled to payment of such a pension.

(3) Paragraph (2)(b) does not apply in the case of a pension payable under regulation 84.

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

#### **Amount of allocation**

**52.**—(1) An election under regulation 51 may not allocate more than one-third of the member's (M) relevant annual pension.

(2) An election may not allocate an amount that would result in—

- (a) the allocated annual pension exceeding M's unallocated relevant annual pension;
- (b) the allocated annual pension exceeding such amount as the scheme manager determines for the purposes of this paragraph—
  - (i) after consultation with the scheme actuary; and
  - (ii) having regard to any restrictions imposed under Part 4 of the 2004 Act<sup>(20)</sup>; or

<sup>(19)</sup> Paragraph 15(3) of Schedule 28 has been amended by regulations 175 and 180(c) of S.I. 2005/3229.

<sup>(20)</sup> Part 4 deals with tax provision for pension schemes.

- (c) the value of the allocated annual pension being such that a lump sum could be paid under paragraph 6 of Schedule 3 by way of commutation of a pension of that amount if the person entitled to the pension is not entitled to any other benefits under the scheme.
- (3) The annual pension allocated must be an exact number of pounds.
- (4) A pension provided pursuant to the election must be calculated in accordance with tables prepared by the scheme actuary.

### **Procedure for election under regulation 51**

**53.**—(1) An election under regulation 51 in respect of a member's (M) pension must be made by notice in writing given to the scheme manager.

- (2) The notice must be in such form and contain such information as the scheme manager requires.
- (3) Subject to paragraphs (6) and (7), the election takes effect when it is accepted by the scheme manager.
- (4) The election may not be withdrawn, amended or revoked after it has taken effect.
- (5) The election does not take effect if—
  - (a) M or the person in whose favour the election is made (the beneficiary) dies on or before the day on which the scheme manager accepts it; or
  - (b) the scheme manager is not satisfied that, at the time the election is made, M is in good health.
- (6) The election is treated as not having taken effect if the beneficiary dies before M is notified in writing that the scheme manager has accepted the election.

### **Effect of allocation**

- 54.**—(1) If an election by a member (M) under regulation 51 has taken effect—
- (a) M's pension is reduced accordingly (even if the beneficiary predeceases M); and
  - (b) if the beneficiary survives M, on M's death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 52.
- (2) An allocation is disregarded if it would result in a pension being paid to a beneficiary who is neither—
- (a) M's spouse or civil partner on the date when M becomes entitled to the pension or dies; nor
  - (b) at the time of M's death, a dependant of M (within the meaning of paragraph 15(2) or (3) of Schedule 28 to the 2004 Act<sup>(21)</sup>).
- (3) References in these Regulations to pensions under Part 5 do not include pensions under this regulation, except where context otherwise requires.
- (4) A pension under this regulation is payable to the beneficiary in addition to a pension payable in respect of M's death under Part 6.

## **CHAPTER 5**

### **Additional pension**

#### **Election to pay contributions for additional pension**

- 55.**—(1) This paragraph applies in relation to a member of the scheme (M) who—
- (a) is in pensionable service under the scheme; and

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(21) Paragraph 15(3) of Schedule 28 has been amended by regulations 175 and 180(c) of [S.I. 2005/3229](#).

- (b) has not reached normal pension age.
- (2) M or, with M's consent, M's employing authority may elect to pay contributions for an additional pension in respect of M ("additional pension election").
- (3) An additional pension election may be made in respect of—
  - (a) an additional (self only) pension; or
  - (b) an additional (self only) pension and an additional (survivor's) pension.
- (4) M may make an election under this regulation more than once.
- (5) In this Chapter, the refund period is the period ending one year after the date on which an election under this regulation is accepted.

#### **Annual rate of additional (self only) pension**

- 56.** The annual rate of additional (self only) pension specified in an additional pension election must be a whole number multiple of—
- (a) £250; or
  - (b) such other amount as is determined by the scheme manager.

#### **Lump sum or periodic payments**

- 57.—**(1) An employing authority's additional pension contributions must be made by lump sum.
- (2) A member's additional pension contributions may be paid either by lump sum or by periodic payments.

#### **Making an additional pension election**

- 58.—**(1) An additional pension election by a member (M) must be made by written notice to the scheme manager stating whether additional pension contributions are to be paid—
- (a) as a lump sum; or
  - (b) by periodic payments.
- (2) An additional pension election by M's employing authority must be made by written notice to the scheme manager.
- (3) A notice under this regulation must be accompanied by a declaration by M that M is in good health.
- (4) An additional pension election must not be made at any time when M is absent from work for any reason.

#### **Accepting an additional pension election**

- 59.—**(1) The scheme manager may accept an additional pension election by giving written notice to—
- (a) the member (M); and
  - (b) M's employing authority.
- (2) The scheme manager may refuse to accept an election if there are reasonable grounds to believe—
- (a) that M is not in good health at the time the election is made; or



- (b) in the case of an election where the contributions are to be made by periodic payments, that M's health is likely to prevent the payment of contributions for the whole of the contributions payment period.

(3) For the purposes of these Regulations, an additional pension election is accepted when M receives notice from the scheme manager.

#### **Determination of contribution payable**

**60.**—(1) The scheme manager must determine the amount to be paid as a lump sum or as a periodic payment.

(2) The amount of the lump sum or periodic payment must be—

- (a) not less than the minimum amount; or
- (b) an amount which is a multiple of the minimum amount.

(3) In paragraph (2), the minimum amount is the amount that would, in accordance with tables prepared by the scheme actuary for the scheme year in which the contributions are paid, be the amount of contribution required to secure the additional pension specified under regulation 56.

(4) The tables mentioned in paragraph (3)—

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

(5) An amendment under paragraph (4)(b) has effect—

- (a) at the start of the next scheme year; or
- (b) such later date as the scheme manager specifies.

#### **Overall limit on extra pension**

**61.**—(1) The scheme manager must not accept an election under regulation 55 from a member (M) in so far as the effect of accepting the election would be to provide M with one or more additional pensions which exceeds or in aggregate exceed the overall limit.

(2) The overall limit is—

- (a) £6,500 for a scheme year ending before 1st April 2016;
- (b) for a scheme year beginning on or after that date—
  - (i) the overall limit of extra pension determined by the Treasury in respect of that Scheme year as published before the start of that scheme year; or
  - (ii) if no such determination is made, the amount calculated under paragraph (3).

(3) The amount is the amount to which the annual rate of a pension of an amount equal to the overall limit of extra pension for the previous scheme year would have been increased under the Pensions (Increase) Act 1971 if—

- (a) that pension were eligible to be so increased; and
- (b) the beginning date for that pension were the first day of the previous scheme year.

(4) In determining the value of an extra pension for the purposes of paragraph (1) the scheme manager must include the value by reference to an annual pension of any actuarial reduction buy-out election having effect in relation to M.

(5) A valuation for the purposes of paragraph (4) must have regard to the advice of the scheme actuary.

**Lump sum contributions: payment of contributions and credit of additional pension**

**62.**—(1) This paragraph applies to a member (M)—

- (a) in respect of whom an additional pension election is accepted; and
- (b) whose notice of election states that contributions are to be paid by lump sum.

(2) M's additional pension account is to be credited with an amount equal to the annual rate of additional (self only) pension stated in the notice of election ("the amount of additional pension") if the lump sum contribution is paid within one month after the additional pension election is accepted.

(3) If the lump sum contribution is not paid within that time an election under regulation 55 is taken not to have been made.

**Repayment of lump sum contribution**

**63.**—(1) This regulation applies if a member (M) has paid a lump sum contribution for additional pension.

(2) The lump sum contribution must be repaid if, before the end of the refund period—

- (a) M dies;
- (b) an ill-health pension becomes payable to M; or
- (c) M leaves all pensionable service and M is not qualified for retirement benefits in respect of that service.

**Periodic contributions**

**64.**—(1) This regulation and regulations 65, 66 and 68 to 71 apply in relation to a member (M)—

- (a) in respect of whom an additional pension election is accepted; and
- (b) whose notice of election states that contributions are to be paid by periodic payments during the contributions payment period.

(2) M's employing authority must—

- (a) deduct the contributions from M's pensionable earnings; and
- (b) pay them to the scheme manager not later than the 19th day of the month following that in which the earnings were paid to M.

(3) The contributions payment period must—

- (a) be a whole number of years;
- (b) begin with the pay period in respect of which the first contribution is paid;
- (c) be not less than one year nor more than 20 years; and
- (d) end before M reaches normal pension age.

(4) If the scheme manager re-determines the amount of the periodic payment during the contributions payment period, the re-determined amount must be paid from—

- (a) the beginning of the next scheme year; or
- (b) such later date as the scheme manager determines.

**Retirement pension (other than ill-health pension) becomes payable before the end of the contributions payment period**

**65.**—(1) This regulation applies if any of the following retirement pensions become payable to M before the end of the contributions payment period—

- (a) a partial retirement pension (if M has elected to receive additional pension with it);
  - (b) a premature retirement pension;
  - (c) an early retirement pension.
- (2) If this regulation applies—
- (a) periodic payments for additional pension cease to be payable on the entitlement day for that pension; and
  - (b) the amount of accrued additional pension as at the day M leaves the pensionable service concerned is an amount determined by the scheme manager, having regard to—
    - (i) the period over which the contributions were paid; and
    - (ii) the length of the contribution payment period.

#### **Revoking an additional pension election (periodic payments)**

- 66.**—(1) A member (M) may revoke an additional pension election at any time before the end of the contributions payment period.
- (2) A revocation must be by notice in writing to—
- (a) the scheme manager; and
  - (b) M’s employing authority.
- (3) A revocation has effect from the start of M’s next pay period (“date of revocation”).
- (4) On the date of revocation under paragraph (1)—
- (a) periodic payments for additional pension under the election cease to be payable; and
  - (b) the amount of accrued additional pension as at that date is an amount determined by the scheme manager.
- (5) The scheme manager may revoke the election if there are reasonable grounds for believing—
- (a) that M’s health will prevent M from paying contributions for the whole of the contributions payment period;
  - (b) that M was aware of the state of M’s health at the time of making the declaration under regulation 58(3); and
  - (c) that M failed to disclose the state of M’s health in the declaration.
- (6) A revocation under paragraph (5) must be given to M by notice in writing.
- (7) If the scheme manager revokes an election under paragraph (5)—
- (a) periodic payments for additional pension under the election cease to be payable; and
  - (b) payments made by M before the date of revocation must be returned to M or, if M is deceased, M’s representatives.

#### **Revocation of election by scheme manager (lump sum)**

- 67.**—(1) The scheme manager may revoke an additional pension election made by a member (M) where the contribution was paid by lump sum if the scheme manager has reasonable grounds for believing that—
- (a) at the time the declaration under regulation 58(3) was made M was aware that the state of M’s health was such that not less than 12 months after the election it was reasonable to assume that M would become entitled to an ill health pension or M’s survivors would become entitled to a pension under Part 6; and
  - (b) M failed to disclose the state of M’s health at the time of making the declaration.

(2) If the scheme manager revokes an election under paragraph (1), the scheme manager must repay the lump sum—

- (a) if the lump sum was paid by M, to M, or if M is deceased, to M’s representatives;
- (b) if the lump sum was paid by M’s employing authority, to the employing authority.

### **Effect of being absent or leaving and rejoining scheme during contributions payment period**

**68.**—(1) This paragraph applies if, during the contributions payment period, a member (M) who has made an election under regulation 55—

- (a) is absent from work because of illness or injury;
- (b) is on maternity leave;
- (c) is on adoption leave;
- (d) is on paternity leave;
- (e) is on parental leave; or
- (f) is within regulation 21(4) or (6).

(2) If paragraph (1) applies—

- (a) the contributions payable under regulation 64 continue to be payable unless M ceases paying basic contributions;
- (b) M may resume paying contributions under regulation 64 only if—
  - (i) M ceases to pay basic contributions; but
  - (ii) resumes paying basic contributions before the end of the period of 12 months beginning with the day on which M first ceased to pay basic contributions.

(3) This paragraph applies if—

- (a) a member (M) has made an election under regulation 55;
- (b) M ceases to be an active member during the contributions payment period; and
- (c) before the end of the period of 12 months beginning with the day on which M ceased to be an active member, M becomes an active member again.

(4) If paragraph (3) applies, M may continue to make contributions in accordance with the election unless a repayment of contributions has been made to M under regulation 40.

(5) For the purposes of paragraph (4), it is immaterial whether M has paid any repaid contributions back to the scheme manager.

(6) In this regulation, “basic contributions” means contributions payable under regulation 30 or 31.

### **Death in service before end of contributions payment period**

**69.**—(1) This regulation applies on the death of a member (D)—

- (a) whose additional pension election is for an additional (self only) pension and an additional (survivor’s) pension; and
- (b) who dies while an active member before the end of the contributions payment period for that election.

(2) If D dies before the end of the refund period—

- (a) the amount of the contributions paid by D must be repaid to D’s representatives;
- (b) the amount of a lump sum paid by D’s employing authority must be repaid to the authority; and

- (c) the additional pension account must be closed.
- (3) If D dies after the end of the refund period—
  - (a) the periodic payments cease to be payable as at the date of D's death; and
  - (b) paragraph (4) applies.
- (4) For the purpose of calculating a survivor's pension—
  - (a) if the scheme manager believes that the declaration that accompanied the additional pension election was made in good faith—
    - (i) the periodic payments under the additional pension election are treated as being paid until the end of the contributions payment period for the election; and
    - (ii) the amount of accrued additional pension calculated is under paragraph 28 of Schedule 9 as at the date of D's death;
  - (b) if the scheme manager has reasonable grounds to believe that declaration was not made in good faith, paragraph (2)(a) to (c) applies.

### **Ill-health pension becomes payable before end of contributions payment period**

**70.**—(1) This regulation applies if an ill-health pension becomes payable to a member (M) before the end of the contributions payment period for an additional pension election.

(2) If an ill-health pension becomes payable to M in consequence of a claim made before the end of the refund period—

- (a) any periodic payments that have been made under the election must be repaid to M;
- (b) the amount of a lump sum paid by M's employing authority must be repaid to the authority; and
- (c) the amount of accrued additional pension attributable to the election as at the last day of pensionable service must be disregarded.

(3) If an ill-health pension becomes payable to M in consequence of a claim made after the end of the refund period—

- (a) the periodic payments under the additional pension election are treated as being paid until the end of the contributions payment period for the election;
- (b) for the purpose of calculating the annual rate of ill-health pension, the amount of accrued additional pension is—
  - (i) if the declaration that accompanied the additional pension election was made in good faith, the amount of accrued additional pension calculated under paragraph 28 of Schedule 9 as at the last day of pensionable service; or
  - (ii) if the declaration was not made in good faith, paragraph (2)(a) to (c) applies.

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

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

- (a) the full amount of contributions payable by a member (M) under an additional pension election is not paid; and
- (b) neither regulation 69(2) nor 70(2) applies.

(2) The amount of accrued additional pension under paragraph 28(3) of Schedule 9 is the appropriate portion of the amount of accrued additional pension if the full amount of contributions had been paid.

(3) In the case of an election under regulation 55(3)(b), the amount of accrued additional pension under Part 6 in respect of M is the appropriate proportion of the amount had the full amount of contributions been paid.

(4) For the purposes of paragraphs (2) and (3), the appropriate proportion is calculated in accordance with such method as the scheme actuary determines and specifies in guidance given to the scheme manager.

- (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 to be paid under the election for the full contributions payment period; and
  - (b) the requirements of Chapter 1 of Part 4 of the 1993 Act relating to the preservation of benefits under occupational pension schemes.

## PART 5

### Members' benefits

#### CHAPTER 1

##### Qualification

#### **Qualifying for retirement benefits**

- 72.** A member is qualified for retirement benefits under this scheme if—
- (a) the member has at least 2 years' qualifying service; or
  - (b) a transfer payment otherwise than from another occupational pension scheme has been accepted in relation to the member.

#### CHAPTER 2

##### Age retirement

#### **Entitlement to age retirement pension**

**73.—(1)** A member is entitled to payment of an age retirement pension from the entitlement day if the member—

- (a) has reached normal pension age;
  - (b) is qualified for retirement benefits or the member ceases pensionable service after reaching normal pension age;
  - (c) has left all NHS employment or reached age 75; and
  - (d) has applied under paragraph 4 of Schedule 3 for the payment of an age retirement pension.
- (2) An age retirement pension is payable for life.

(3) This regulation does not apply to a pension derived from pension credit rights (see section 101B of the 1993 Act<sup>(22)</sup>).

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(22) Section 101B was inserted by section 37 of the Welfare Reform and Pensions Act 1999 (c.30).

### **Annual rate of age retirement pension**

74. The annual rate of age retirement pension payable to an active member or a deferred member who becomes entitled to payment of an age retirement pension is calculated in accordance with paragraph 1 of Schedule 13.

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

75.—(1) Paragraph (2) applies where a member becomes entitled to the immediate payment of an age retirement pension on ceasing pensionable employment after reaching normal pension age.

(2) An increase amount (“the late payment actuarial increase”) must be calculated in accordance with paragraph 2 of Schedule 13.

### **Pension credit member**

76.—(1) A pension credit member is entitled to a pension derived from the member’s pension credit rights (see section 101B of the 1993 Act) if—

- (a) the relevant event occurs; and
- (b) the member claims payment of the pension.

(2) The relevant event is whichever is the later of the following—

- (a) the pension credit member reaches whichever is the later of the age of 65 or state pension age; and
- (b) the date on which the pension sharing order or provision under which the member is entitled to the pension credit takes effect.

(3) The pension becomes payable on the occurrence of the relevant event.

(4) The amount of the pension is equal to the member’s pension credit calculated in accordance with regulations under paragraph 5(b) of Schedule 5 to the 1999 Act.

(5) A pension credit member who does not fall within paragraph (2)(a) is entitled to immediate payment of a reduced pension if the member—

- (a) has reached normal minimum pension age; and
- (b) claims payment of the pension.

(6) The amount of the pension under paragraph (5) is—

- (a) the amount calculated pursuant to paragraph (4), less
- (b) such amount as the scheme manager determines to be appropriate in consequence of payment of the pension before the pension credit member is within paragraph (2)(a).

(7) For the purposes of making a determination under paragraph (6)(b), the scheme manager must consult the scheme actuary.

(8) A claim under paragraph (1) or (5)—

- (a) must be made in writing in such form as the scheme manager requires;
- (b) takes effect from the date specified in the claim as the date on which the pension is to become payable.

(9) A pension credit member in relation to whom the relevant event has not occurred is entitled to immediate payment of a pension if, in the opinion of the scheme manager, the pension credit member—

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

(c) claims payment of the pension.

(10) The amount of the pension under paragraph (9) is calculated as mentioned in paragraph (4).

(11) For the purposes of paragraph (9), the scheme manager may require whatever medical evidence the scheme manager thinks necessary.

(12) A pension sharing order or provision is an order or provision mentioned in section 28(1) of the 1999 Act<sup>(23)</sup>.

### **Conversion of part of pension into lump sum**

77.—(1) Subject to paragraph (2) and Part 2 of Schedule 13, the following members may apply to the scheme manager to receive a lump sum in place of part of a pension—

- (a) a member who is entitled to payment of a retirement pension;
- (b) a pension credit member who is entitled to payment of a pension credit retirement pension.

(2) Paragraph (1)(b) only applies if—

- (a) the member's pension credit is derived from rights attributable to the pensionable service of a pension debit member; and
- (b) a retirement pension does not become payable to the pension debit member before the day on which a pension sharing order takes effect in respect of that pensionable service.

(3) Subject to paragraph (4), where an application is made pursuant to paragraph (1), the amount of pension converted into a lump sum is £1 for every £12 paid as a lump sum to the member.

(4) Paragraph (5) applies if a retirement pension converted under this regulation—

- (a) is adjusted by virtue of regulation 93, or
- (b) is abated to zero by virtue of regulation 86(3) and regulation 87 applies.

(5) The amount of pension converted into a lump sum for any retirement pension that subsequently becomes payable to the member is an amount determined by the scheme manager after consulting the scheme actuary.

(6) If the pension is an ill-health pension under regulation 90, the option under this regulation may only be exercised by giving notice to the scheme manager—

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

(7) If the pension is a Tier 2 IHP under regulation 93 in substitution for a Tier 1 IHP under regulation 90, the option under this regulation may only be exercised—

- (a) in relation to the difference between the Tier 1 IHP that ceases to be payable pursuant to sub-paragraph (a) of regulation 93(5) and the Tier 2 IHP to which the member becomes entitled under sub-paragraph (b) of that regulation; and
- (b) by giving notice to the scheme manager—
  - (i) at the time of the award of the Tier 2 IHP, or
  - (ii) before such later time as the scheme manager specifies in writing.

(8) Notice under paragraph (6) or (7) must be—

- (a) given in writing;
- (b) in such form as the scheme manager requires.

<sup>(23)</sup> Section 28(1) has been amended by section 261(1) of, and paragraph 159(1) to (7) of Schedule 27 to, the Civil Partnership Act 2004 (c.33).



(9) In paragraph (7) the references to a Tier 1 IHP and a Tier 2 IHP must be construed in accordance with regulation 90.

(10) This regulation does not apply to a pension credit member whose rights under this scheme are attributable to a disqualifying pension credit for the purposes of paragraph 2 of Schedule 29 to the 2004 Act<sup>(24)</sup>.

### **Entitlement day**

**78.**—(1) The entitlement day for the purposes of an age retirement pension is—

- (a) if the member (M) is in NHS employment on the day on which M reaches normal pension age—
  - (i) the day after M ceases to be in NHS employment; or
  - (ii) the day on which M reaches the age of 75;
- (b) if M is not in NHS employment on the day on which M reaches normal pension age, that day.

(2) If regulation 98 applies to M, for the purposes of M's entitlement to a pension in respect of old employment (within the meaning of regulation 101(3)) a reference in this regulation to M ceasing to be in NHS employment must be treated as a reference to M ceasing to be in the old employment.

## CHAPTER 3

### Early and premature retirement

#### **Early retirement**

**79.**—(1) A member (M) is entitled to payment of a reduced pension (an early retirement pension) from the entitlement day if M—

- (a) has reached normal minimum pension age but has not reached normal pension age;
- (b) is qualified for retirement benefits;
- (c) has ceased all NHS employment; and
- (d) has applied under paragraph 4 of Schedule 3 for payment of an early retirement pension.

(2) M is not entitled to payment of an early retirement pension if the scheme manager, after consultation with the scheme actuary, decides that the amount of the pension would be less than the amount of the guaranteed minimum pension (if any) to which M is entitled.

(3) An early retirement pension is payable for life.

(4) Part 3 of Schedule 13 has effect in respect of the calculation of the amount of an early retirement pension.

#### **Entitlement day**

**80.**—(1) The entitlement day for the purposes of an early retirement pension is—

- (a) in the case of a deferred member, 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, the day immediately following the day on which M ceased to be employed in NHS employment.

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<sup>(24)</sup> Paragraph 2 of Schedule 29 has been amended by section 161(1) of, and paragraphs 1 and 23 of Schedule 23 to, the Finance Act 2006 (c.25), section 70 of, and paragraphs 1 and 11(1) and (4) of Schedule 20 to, the Finance Act 2007 (c.11), section 65 of, and paragraphs 23 and 25 of Schedule 16 to, the Finance Act 2011 (c.11) and section 48(5) of, and paragraphs 5 and 8(1) and (2) of Schedule 22 to, the Finance Act 2013 (c.29).

(2) If regulation 98 applies to M, for the purposes of M's entitlement to a pension in respect of old employment (within the meaning of regulation 101(3)) a reference in this regulation to M ceasing to be in NHS employment must be treated as a reference to M ceasing to be in the old employment.

### **Premature retirement in the interests of efficiency**

**81.**—(1) A relevant member (M) is entitled to payment of a premature retirement pension from the entitlement day if—

- (a) M has reached normal minimum pension age but has not reached normal pension age;
- (b) M is qualified for retirement benefits;
- (c) M's pensionable employment has been terminated by M's employing authority in the interests of the efficient discharge of the functions of M's employing authority;
- (d) M's employing authority gives written notice to the scheme manager pursuant to paragraph (2);
- (e) the scheme manager certifies that M's employment is terminated in the interests of the efficient discharge of the employing authority's functions;
- (f) M has ceased to be employed in NHS employment; and
- (g) not later than 6 months after M's employment is terminated, M applies under paragraph 4 of Schedule 3 for payment of a premature retirement pension.

(2) The notice must state that—

- (a) M's pensionable employment was terminated in the interests of the efficient discharge of the employing authority's functions;
- (b) M has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to the employment;
- (c) the employing authority agrees that a premature retirement pension should become payable to M; and
- (d) M has not unreasonably refused—
  - (i) to seek suitable alternative employment; or
  - (ii) to accept an offer of such employment.

(3) A certificate under paragraph (1)(e) may be given only with the agreement of M's employing authority.

(4) A premature retirement pension is payable for life.

(5) A relevant member is a member who is not—

- (a) a practitioner;
- (b) a non-GP provider; or
- (c) practice staff.

(6) Part 4 of Schedule 13 has effect in respect of the calculation of the amount of a premature retirement pension.

### **Premature retirement on grounds of redundancy**

**82.**—(1) A relevant member (M) is entitled to payment of a premature retirement pension from the entitlement day if—

- (a) M has reached normal minimum pension age but has not reached normal pension age;
- (b) M is qualified for retirement benefits;

- (c) M's pensionable employment has been terminated by M's employing authority by reason of M's redundancy;
  - (d) M's employing authority gives written notice to the scheme manager pursuant to paragraph (2);
  - (e) the scheme manager certifies that M's employment is terminated by reason of redundancy;
  - (f) M has ceased to be employed in NHS employment; and
  - (g) not later than 6 months after M's employment is terminated, M applies under paragraph 4 of Schedule 3 for payment of a premature retirement pension.
- (2) The notice must state—
- (a) that M's pensionable employment was terminated by reason of M's redundancy;
  - (b) that M has at least 2 years' continuous employment determined in accordance with any terms and conditions applying to the employment;
  - (c) that the employing authority agrees that a premature retirement pension should become payable to M;
  - (d) that M has not unreasonably refused—
    - (i) to seek suitable alternative employment; or
    - (ii) to accept an offer of such employment;
  - (e) that M is entitled to claim a pension under this regulation as an alternative to receiving (in whole or in part) the lump sum payment otherwise payable to M in accordance with those terms and conditions; and
  - (f) whether the additional contribution option applies to M.
- (3) A certificate under paragraph (1)(e) may be given only with the agreement of M's employing authority.
- (4) A premature retirement pension is payable for life.
- (5) M is not entitled to payment of a premature retirement pension if the scheme manager, after consultation with the scheme actuary, decides that the amount of the pension would be less than the amount of the guaranteed minimum pension to which M is entitled.
- (6) If the additional contribution option applies, the payment of M's pension does not start until M's employing authority has at the same time—
- (a) remitted to the scheme manager M's contribution paid to the employing authority pursuant to regulation 32(6); and
  - (b) paid the contribution required under regulation 35(2).
- (7) Sub-paragraph (a) of paragraph (6) does not apply if—
- (a) M has chosen not to pay a contribution as mentioned in regulation 32(2); and
  - (b) the employing authority gives confirmation of that in writing to the scheme manager.
- (8) A relevant member is a member who is not—
- (a) a practitioner;
  - (b) a non-GP provider; or
  - (c) practice staff.
- (9) The additional contribution option applies if the terms and conditions of M's employment entitle M optionally to make an additional contribution towards the cost of paying the pension if the lump sum payment is insufficient to meet that cost in full.

(10) Part 4 of Schedule 13 has effect in respect of the calculation of the amount of a premature retirement pension.

### **Premature retirement entitlement day**

**83.** The entitlement day for a premature retirement pension is the day immediately following the day on which M ceased to be employed in NHS employment.

## CHAPTER 4

### Partial retirement

### **Election for partial retirement (members over normal minimum pension age)**

**84.**—(1) This regulation applies to a member (M) if—

- (a) M has reached normal minimum pension age;
- (b) M continues to be employed in an employment in which M is an active member;
- (c) M is qualified for retirement benefits;
- (d) the terms on which M holds or engages in the employment mentioned in sub-paragraph (b) change; and
- (e) as a result of the change, M is subject to a relevant reduction.

(2) In paragraph (1), M is subject to a relevant reduction if—

- (a) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the employment mentioned in paragraph (1)(b) are reduced to 90% or less of the amount of M's pensionable earnings during the period of 12 months ending with the election day;
- (b) where M is a practitioner or a non-GP provider, M's engagement in the employment is reduced to 90% or less of its level during that period.

(3) If this regulation applies M may elect to claim immediate payment of pension as specified in the election pursuant to paragraphs (a) and (b)—

- (a) M must specify the percentage of pension M claims (the specified percentage);
- (b) M must specify whether M claims any additional pension to which M is entitled.

(4) The election must be exercised by notice in writing to the scheme manager in such form as the scheme manager determines and must be accompanied by—

- (a) where M is neither a practitioner nor a non-GP provider, a statement in writing by the employing authority that the conditions in paragraph (1)(d) and (e) are met;
- (b) where M is a practitioner or a non-GP provider—
  - (i) appropriate supporting evidence; and
  - (ii) a statement in writing by the host Board that the conditions in paragraph (1)(d) and (e) are met.

(5) The specified percentage must be such that—

- (a) the amount of the pension to which M becomes entitled as a result of the election—
  - (i) is not less than 20% of the pension that would have been payable if M had ceased to be employed in all of M's employments at the end of the election day; and
  - (ii) taken together with any increase to which M is entitled in consequence of the election, is not less than 0.05% of M's lifetime allowance on the election day;

- (b) the amount of the pension in respect of which M does not require immediate payment is not less than 20% of the amount that would have been payable if M had ceased to be employed in all of M's employments at the end of the election day.
- (6) In applying paragraph (5)—
- (a) any additional pension to which M is entitled must be ignored; and
- (b) the amount in sub-paragraph (a) is the amount of the pension disregarding the effect of an application under regulation 77.
- (7) An election under this regulation may be made on not more than two occasions and the scheme manager must take advice from the scheme actuary regarding—
- (a) any benefits to be paid after the first election (but before the second election);
- (b) any benefits to be paid after a second election; and
- (c) the final payment.

(8) If M was not an active member during the whole of the period of 12 months mentioned in paragraph (2)(a), that paragraph applies as if M's pensionable earnings during that period were—

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

where—

PE is M's pensionable earnings for the part of that period during which M was an active member; and

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

(9) In this regulation and regulations 85 to 89, the election day is the day before the relevant reduction takes effect.

### **Effect of election**

**85.**—(1) This regulation applies if a member (M) makes an election under regulation 84.

(2) M is entitled—

- (a) if M has reached normal pension age, to immediate payment of the specified percentage of the pension to which M would be entitled by virtue of regulation 73(1) if M had ceased to be employed in one or more employments on election day;
- (b) if M has not reached normal pension age, to immediate payment of the specified percentage of the pension to which M would be entitled by virtue of regulation 79 if M had ceased to be employed in one or more employments on election day; and
- (c) if the election specifies that M claims immediate payment of additional pension, to the additional pension subject—
- (i) where sub-paragraph (a) applies, to an increase of the same amount as would be made in that pension pursuant to paragraph 2 of Schedule 13 if M had ceased to be employed on the election day; and
- (ii) where sub-paragraph (b) applies, to a reduction of the same amount as would have been made in that pension pursuant to regulation 79 if M had so ceased to be employed.

(3) For the purposes of this Part—

(a) M is a pensioner member as respects—

- (i) the pension to which M is immediately entitled as a result of making the election; and

- (ii) the specified percentage of the pensionable service that pension represents, in respect of which M is an active member on the election day;
- (b) if M continues in pensionable service after the election day, M is an active member as respects—
  - (i) the pensionable service after that day in which M continues; and
  - (ii) so much of the pensionable service in respect of which M is an active member as is not within sub-paragraph (a) (the unspecified service); and
- (c) if M does not continue in pensionable service after the election day, M is a deferred member as respects the unspecified service.

### **Terms of employment improve after election**

- 86.**—(1) This regulation applies if—
- (a) a member (M) has made an election under regulation 84(3);
  - (b) during the period of 12 months beginning with the day following election day the terms on which M holds the employment (or employments) mentioned in regulation 84(1)(b) change again; and
  - (c) as a result M is subject to a relevant increase.
- (2) In paragraph (1) M is subject to a relevant increase if—
- (a) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the employment (or employments) is increased to more than 90% of M's pensionable earnings during the period of 12 months ending with the election day;
  - (b) where M is a practitioner or a non-GP provider, the level of M's engagement in the employment is increased to more than 90% of M's pre-change level.
- (3) The amount of M's pension mentioned in regulation 85(2) is abated to zero from the first pension day following the day on which the relevant increase occurred.
- (4) If, during the period of 12 months beginning with the day following election day, M enters further employment in which M is an active member—
- (a) the terms on which M holds the employment in respect of which the election was made (the election employment) are treated as having changed again; and
  - (b) for the purpose of determining whether M is subject to a relevant increase—
    - (i) where M is a practitioner or a non-GP provider, M's level of engagement in the further employment is treated as engagement in the election employment; and
    - (ii) where M is neither a practitioner nor a non-GP provider, M's pensionable earnings in the further employment are treated as pensionable earnings from the election employment.
- (5) Paragraph (3) does not apply if—
- (a) the only change to M's terms as mentioned in paragraph (1)(b) is to M's pensionable earnings;
  - (b) the scheme manager considers that the annual rate of M's pensionable earnings at the time of the change would have exceeded the annual rate mentioned in paragraph (2)(a).
- (6) If M was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(b), that paragraph applies as if M's pensionable earnings during that period were—

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

where—

PE is M's pensionable earnings for the part of the period during which M was an active member; and

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

(7) In paragraph (2)(b), the pre-change level is the level of M's engagement in the employment during the period of 12 months ending on the election day.

### **Member becomes subject to reduction following abatement**

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

(a) regulation 86 applies to a member (M) such that M's pension is abated to zero pursuant to paragraph (3) of that regulation; and

(b) M again becomes subject to a relevant reduction (within the meaning of regulation 84(2)).

(2) The scheme manager must restore the payment of M's pension with effect from the first pension day immediately following the day on which M became subject to the relevant reduction as mentioned in paragraph (1)(b).

(3) The scheme manager must not act under paragraph (2) unless the scheme manager obtains and has regard to 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.

### **Payment of pension after abatement**

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

(a) a member's (M) pension is abated pursuant to regulation 86(3); and

(b) M's pensionable earnings are not reduced in consequence of M again becoming subject to a relevant reduction as mentioned in regulation 87(2).

(2) M's pension is payable by the scheme manager—

(a) when M partially retires or retires again from pensionable employment; or

(b) M attains the age of 75.

(3) For the purposes of paragraph (2), the scheme manager must—

(a) have regard to any pension already paid, including any lump sum paid as a result of M making an application under regulation 77 (conversion of part of pension into lump sum); and

(b) obtain advice from the scheme actuary.

### **Application of regulations 84 to 88: concurrent employments**

**89.**—(1) This regulation applies if a person (M) is an active member in two or more employments held concurrently on the election day.

(2) Regulations 84 to 88 apply in relation to each of the employments as if it were the only employment held by M on that day, subject to the following modifications.

(3) In regulation 84—

(a) for paragraph (2)(a) substitute—

“(a) where M is neither a practitioner nor a non-GP provider, if the sum of the annual rate of M's pensionable earnings in that employment and every other employment held by M on the election day is reduced to 90% or less of the sum of—

- (i) M's pensionable earnings in the employment during the period of 12 months ending with the election day; and
  - (ii) M's pensionable earnings during that period in every other employment held by M on that day.”; and
- (b) in paragraph (8), after “paragraph (2)(a)” insert “in respect of any of the employments held by M”.
- (4) In regulation 86, for paragraph (2)(a) substitute—
  - “(a) where M is neither a practitioner nor a non-GP provider, the annual rate of M's pensionable earnings in the employment is increased to more than 90% of the sum of—
    - (i) M's pensionable earnings in the employment during the period of 12 months ending with the election day; and
    - (ii) M's pensionable earnings during that period in every other employment held by M on that day.”.
- (5) In the case of a practitioner or a non-GP provider, a reference to M's employment is a reference to M's pensionable service as a practitioner together with any concurrent NHS employment, and “terms of employment” must be construed accordingly.

## CHAPTER 5

### Ill-health pension

#### **Entitlement to ill-health pension**

- 90.**—(1) An active member (M) is entitled to immediate payment of—
- (a) an ill-health pension at Tier 1 (a Tier 1 IHP) if the Tier 1 conditions are satisfied in relation to M;
  - (b) an ill-health pension at Tier 2 (a Tier 2 IHP) if the Tier 2 conditions are satisfied in relation to M.
- (2) The Tier 1 conditions are that—
- (a) M has not attained normal pension age;
  - (b) M has ceased to be employed in NHS employment;
  - (c) the scheme manager is satisfied that M suffers from a physical or mental infirmity as a result of which M is permanently incapable of efficiently discharging the duties of M's employment;
  - (d) M's employment is terminated because of the physical or mental infirmity; and
  - (e) M has claims payment of the pension.
- (3) The Tier 2 conditions are that—
- (a) the Tier 1 conditions are satisfied in relation to M; and
  - (b) the scheme manager is also satisfied that M suffers from a physical or mental infirmity as a result of which M is permanently incapable of engaging in regular employment of like duration.
- (4) M is not entitled to payment of a pension under this regulation if M's NHS employment is terminated because—
- (a) M is dismissed (unless the scheme manager is satisfied that the dismissal was because of M's infirmity);
  - (b) M retires or resigns at a time when—



- (i) M is subject to disciplinary proceedings; or
- (ii) had been notified that such proceedings were being contemplated; or
- (c) M otherwise retires or resigns, unless—
  - (i) at the time of doing so M’s employing authority has notified the scheme manager in writing that M’s physical or mental infirmity is the reason for the termination; and
  - (ii) the scheme manager is satisfied that is the case.
- (5) In paragraph (3)(b), “regular employment of like duration” means—
  - (a) in the case of a practitioner or a non-GP provider, such employment as the scheme manager thinks would involve a similar level of engagement to M’s current pensionable service as a practitioner or non-GP provider;
  - (b) in any other case, where prior to ceasing NHS employment, M 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 M worked in the employment.
- (6) A pension under this regulation is payable for life: but see regulations 95 and 96.

### **Member’s incapacity**

**91.**—(1) For the purpose of determining whether a member (M) is permanently incapable of discharging the duties of M’s employment efficiently, the scheme manager must—

- (a) have regard to the factors in paragraph (2), no one of which is to be decisive; and
- (b) disregard M’s personal preference for or against engaging in the employment.
- (2) The factors mentioned in paragraph (1)(a) are—
  - (a) whether M has received appropriate medical treatment in respect of the infirmity;
  - (b) M’s mental capacity;
  - (c) M’s physical capacity;
  - (d) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation; and
  - (e) any other matter the scheme manager thinks appropriate.

(3) For the purpose of determining whether M is permanently incapable of engaging in regular employment of like duration as mentioned in paragraph (3)(b) of regulation 90, the scheme manager must—

- (a) have regard to the factors in paragraph (4), no one of which is to be decisive; and
  - (b) disregard the factors in paragraph (5).
  - (4) The factors mentioned in paragraph (3)(a) are—
    - (a) whether M has received appropriate medical treatment in respect of the infirmity;
    - (b) such reasonable employment as M would be capable of engaging in if due regard is given to—
      - (i) M’s mental capacity;
      - (ii) M’s physical capacity;
      - (iii) M’s previous training; and
      - (iv) M’s previous practical, professional and vocational experience,
- irrespective of whether or not such employment is available to M.

- (c) the type and period of rehabilitation it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the rehabilitation, having regard to—
    - (i) M’s mental capacity; and
    - (ii) M’s physical capacity;
  - (d) the type and period of training it would be reasonable for M to undergo in respect of the infirmity, regardless of whether M has undergone the training, having regard to—
    - (i) M’s mental capacity;
    - (ii) M’s physical capacity;
    - (iii) M’s previous training; and
    - (iv) M’s previous practical, professional and vocational experience; and
  - (e) any other matter the scheme manager thinks appropriate.
- (5) The factors mentioned in paragraph (3)(b) are—
- (a) M’s personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of M.
- (6) In this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the infirmity, but does not include any treatment that the scheme manager considers—
- (a) that it would be reasonable for M to refuse;
  - (b) would provide no benefit to restoring M’s capacity for—
    - (i) discharging the duties of M’s employment efficiently for the purposes of paragraph (2)(c) of regulation 90; or
    - (ii) engaging in regular employment of like duration for the purposes of paragraph (3)(b) of that regulation;
  - (c) that, through no fault on the part of M, it is not possible for M to receive before M reaches normal pension age.
- “permanently” means until M attains M’s prospective normal pension age; and
- “regular employment of like duration” has the same meaning as in regulation 90.

### **Annual rate of ill-health pension**

- 92.**—(1) The annual rate of Tier 1 IHP payable to a member (M) is found by—
- (a) taking the amount of full retirement earned pension specified in M’s pensioner member’s account;
  - (b) subtracting the conversion amount (if any) specified in that account in relation to that amount; and
  - (c) adding the amount of accrued additional pension (if any) calculated in accordance with regulation 70(3)(b) less the conversion amount (if any) specified in the account in relation to the additional pension.
- (2) The annual rate of Tier 2 IHP payable to M is the sum of—
- (a) the annual rate of Tier 1 IHP; and
  - (b) the Tier 2 addition.
- (3) The Tier 2 addition is found by applying the following formula:

$$\frac{A \times (C + E)}{C} - A$$

where—

A is the aggregate of the amounts of all of M's pensions from pensionable service on the day after M's last day of pensionable service (L+1)—

- (i) disregarding any additional pension; and
- (ii) including any increases applied by virtue of the Pensions (Increase) Act 1971(25);

C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued; and

E is the period counted in days equal to 50% of the length of the period starting on L+1 and ending on M's prospective normal pension age, and any part of a day must be taken to be a whole day.

### **Re-assessment of entitlement**

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

- (a) in respect of a member (M) the scheme manager is satisfied as mentioned in regulation 90(2)(c); and
- (b) at the time M is awarded a pension the scheme manager gives M notice in writing as mentioned in paragraph (2).

(2) The notice is that M's case may be considered once within a period of three years beginning with the date of the award to determine whether, at the date of the consideration, M meets the condition in regulation 90(3)(b).

(3) M may apply to the scheme manager for a review of whether M subsequently meets the condition in regulation 90(3)(b) if—

- (a) M makes the application in writing no later than the relevant date;
- (b) the application is accompanied by further written medical evidence—
  - (i) relating to whether, at the date of the scheme manager's review, M has the physical or mental infirmity mentioned in regulation 90(3)(b); and
  - (ii) that relates to the same physical or mental infirmity as a result of which M met the condition in regulation 90(2)(c);
- (c) no previous application for a review has been made under this paragraph; and
- (d) M has not become entitled to a Tier 2 IHP in respect of any later service under regulation 97.

(4) The relevant date in paragraph (3)(a) is—

- (a) the last day of the period of three years after the giving of notice under paragraph (1)(b); or
- (b) if M engages in further NHS employment during that period, the first anniversary of the day on which the employment commences or, if sooner, the last day of that period.

(5) If, after considering the further medical evidence the scheme manager determines that M has the physical or mental infirmity for the purposes of regulation 90(3)(b), with effect from the date the determination is made, M—

- (a) ceases to be entitled to a Tier 1 IHP; and
- (b) becomes entitled to a Tier 2 IHP.

(6) If a determination is made under paragraph (5), in calculating the Tier 2 addition pursuant to regulation 92(3), in the explanation of factor E for “period starting on L+1” substitute “period starting on day of the determination under regulation 93(5)”.

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

- 94.**—(1) A deferred member (DM) is entitled to immediate payment of a pension if—
- (a) DM is not in NHS employment;
  - (b) DM has not attained normal pension age;
  - (c) the scheme manager is satisfied that DM suffers from physical or mental infirmity as a result of which DM is permanently incapable of engaging in regular employment of like duration; and
  - (d) DM claims payment of the pension.
- (2) DM is entitled to immediate payment of a pension if—
- (a) DM is in NHS employment;
  - (b) DM has not attained normal pension age;
  - (c) the scheme manager is satisfied that DM—
    - (i) is not within paragraph (1)(b); but
    - (ii) suffers from a physical or mental infirmity as a result of which DM is permanently incapable of discharging the duties of DM’s employment efficiently; and
  - (d) DM leaves the employment and claims payment of the pension.
- (3) The amount of a pension payable under this regulation is found by applying regulation 92(1) as if—
- (a) a reference to M is a reference to DM; and
  - (b) the pension under this regulation is a Tier 1 IHP.
- (4) Regulation 91 applies for the purposes of this regulation as if—
- (a) a reference to M is a reference to DM; and
  - (b) a reference to regular employment of like duration is a reference to such employment for the purposes of paragraph (1)(c).

#### **Effect of re-employment on Tier 2 IHP**

- 95.**—(1) This regulation applies if a member (M)—
- (a) is entitled to a Tier 2 IHP under regulation 90 in respect of earlier service;
  - (b) did not opt to exchange the pension for a lump sum in accordance with regulation 109; and
  - (c) has re-entered employment (M’s further employment).
- (2) M continues to be entitled to a Tier 2 IHP if M’s further employment—
- (a) is not NHS employment; and
  - (b) is an excluded employment.
- (3) M continues to be entitled to a Tier 2 IHP during the initial period if M’s further employment—
- (a) is NHS employment; and
  - (b) is an excluded employment.
- (4) M ceases to be entitled to a Tier 2 IHP and is treated as being entitled to a Tier 1 IHP if—
- (a) M’s employment—

- (i) is not NHS employment; and
    - (ii) is not an excluded employment; or
  - (b) during the initial period, M’s employment—
    - (i) is NHS employment; and
    - (ii) is not an excluded employment; or
  - (c) after the initial period, M’s employment is NHS employment.
- (5) As regards further employment in NHS employment—
- (a) paragraph (4)(c) applies from the first day on which payment of a Tier 1 IHP falls after the first anniversary of M’s re-entry into NHS employment, whether or not that day is part of a continuous period of further NHS employment beginning with entry into that employment;
  - (b) M may not re-join the scheme in respect of that employment or any other NHS employment until after the first anniversary of M’s re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.
- (6) For the purposes of this regulation—
- (a) an employment is an excluded employment at any time in a tax year, in relation to M, if M’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 (4) 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 IHP in which the limit described in subparagraph (a) is first exceeded; and
  - (c) “the initial period” means the period of 12 months beginning with the day on which M first enters an employment which results in this regulation applying.
- (7) M must—
- (a) notify the scheme manager if M is in NHS employment at the end of the initial period;
  - (b) notify the scheme manager if M’s aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded; and
  - (c) provide the scheme manager or any other person specified by the scheme manager with such further information as the scheme manager specifies concerning any further employment.
- (8) In this regulation—
- (a) the lower earnings limit must be read in accordance with section 5 of the Social Security Contributions and Benefits Act 1992(26);
  - (b) “tax year” means a year of assessment for income tax purposes.

### **Renewed entitlement to Tier 2 IHP**

- 96.**—(1) This regulation applies to a member (M) who—
- (a) has not attained normal pension age; and
  - (b) has ceased to be entitled to a Tier 2 IHP by virtue of regulation 95(4).

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(26) Section 5 was substituted by section 73 of, and paragraph 1 of Schedule 9 to, the Welfare Reform and Pensions Act 1999 (c.30) and amended by sections 7(1) and (3) and 27(2) of, and Part 4 of Schedule 7 to, the Pensions Act 2007 (c.22) and sections 1(1) and 4(2) of, and Schedule 2 to, the National Insurance Contributions Act 2008 (c.16).

- (2) M may apply to the scheme manager under this regulation to become entitled to a Tier 2 IHP if—
- (a) M is in further NHS employment and ceases to be employed at all during the initial period; or
  - (b) M is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which the further employment ceased to be an excluded employment.
- (3) An application to which paragraph (2)(a) applies must—
- (a) state that M has ceased to be employed at all;
  - (b) be made within the initial period;
  - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 90(3)(b).
- (4) An application to which paragraph (2)(b) applies must—
- (a) state that M has ceased to be employed at all;
  - (b) be made within the period of one year beginning with the day on which the employment ceased to be an excluded employment;
  - (c) be in writing and be accompanied by evidence from a registered medical practitioner that M has the physical or mental infirmity mentioned in regulation 90(3)(b).
- (5) If the scheme manager is satisfied that M has the physical or mental infirmity mentioned in regulation 90(3)(b), from the day following that on which M's last employment ceased—
- (a) M ceases to be treated as entitled to the Tier 1 IHP; and
  - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service.
- (6) Expressions used in this regulation and in regulation 95 have the same meaning as in that regulation.

### **Re-employed Tier 1 IHP members**

**97.**—(1) This regulation applies to a member (M) if M is entitled to a Tier 1 IHP in respect of M's earlier service.

- (2) M is entitled to the benefits in paragraph (3) if—
- (a) M became entitled to a Tier 1 IHP for the earlier service; and
  - (b) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP.
- (3) The benefits are—
- (a) M's original Tier 1 IHP in respect of M's earlier service; and
  - (b) a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of M's later service.
- (4) M is entitled to the benefits in paragraph (5) if—
- (a) M ceases to be entitled to a Tier 1 IHP in respect of the earlier service;
  - (b) M becomes entitled to a Tier 2 IHP in respect of the earlier service in accordance with regulation 93(5); and
  - (c) on the termination of the later service, M becomes entitled to a Tier 1 IHP or a Tier 2 IHP (as the case may be) in respect of the later service.
- (5) The benefits are—
- (a) a Tier 2 IHP paid in accordance with regulation 93 in respect of M's earlier service; and
  - (b) a Tier 1 IHP in respect of M's later service.

## CHAPTER 6

### Dual capacity and multiple employment

#### **Dual capacity membership: pension benefits**

- 98.**—(1) This paragraph applies if a member is—
- (a) a member of this scheme in 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;
  - (d) a pension credit member.
- (3) If paragraph (1) applies—
- (a) pension benefits are payable to the member (or to a person to whom the member has elected to allocate a pension under regulation 51) as if the member were two or more members of the kind in question (so that two or more pensions or lump sums are payable in respect of one member); and
  - (b) the amounts payable are determined accordingly.
- (4) If a person who is a pension credit member is entitled to two or more pension credits—
- (a) benefits are payable to the member under this scheme as if the member 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 one pension credit member); and
  - (b) the amounts payable are determined accordingly.

#### **Deferred pension becomes payable during NHS re-employment following transfer of undertaking**

- 99.**—(1) A member is not prevented from becoming entitled to a relevant pension because of continuing NHS employment if—
- (a) the member is an active member in the NHS employment which 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 mentioned in sub-paragraph (a).
- (2) Benefits payable in respect of new employment (within the meaning of regulation 101(3)) are calculated without regard to pensionable service in respect of the old employment (within the meaning of that regulation).
- (3) A relevant pension is a pension in respect of the pensionable service referred to in paragraph (1)(b).

#### **Retirement benefits for members with more than one employment**

- 100.**—(1) This regulation applies to a member (M) who is in receipt of pensionable earnings in respect of two or more employments each of which is attributable to M belonging to any of groups A to C in the table in regulation 27(1).

(2) Subject to paragraphs (4) and (5), M does not become entitled to a pension under any of the regulations specified in paragraph (3) until—

- (a) the termination of all of M's NHS employments (including employment as a practitioner), or
- (b) M reaches the age of 75.

(3) The regulations are—

- (a) regulation 73;
- (b) regulation 79;
- (c) regulation 81;
- (d) regulation 82;
- (e) regulations 90 to 97.

(4) Paragraph (5) applies if M—

- (a) leaves employment (“past employment”) with one employing authority; and
- (b) in relation to the past employment, becomes entitled to a pension under regulation 81 or 82.

(5) M may elect—

- (a) to take benefits only in respect of the past employment; and
- (b) to continue to accrue rights in respect of any other continuing pensionable employment.

(6) If M elects as mentioned in paragraph (5), paragraph (2) applies in relation to an employment in respect of which M continues to accrue rights to benefits.

(7) Chapter 7 of Part 5 applies if M becomes entitled to a pension under paragraph (5) while continuing in other NHS employment.

(8) Paragraphs (9) and (10) apply if—

- (a) M becomes entitled to a pension under regulation 81 or 82; and
- (b) terminated concurrent employment as a practitioner not more than 12 months before becoming entitled to the pension.

(9) M is not entitled to receive a pension under regulation 81 or 82 in respect of any employment as practitioner, but is entitled only to receive a pension in respect of that employment pursuant to regulation 73 or 79.

(10) M may exercise a right to transfer out under Section 2 of Chapter 2 of Part 7 only if M leaves all pensionable service—

- (a) before reaching normal pension age; and
- (b) before becoming entitled to a pension under this scheme.

## CHAPTER 7

### Abatement on re-employment

#### Application of Chapter

**101.**—(1) This Chapter applies if—

- (a) a person who is a pensioner member of this scheme is employed in NHS employment;
- (b) the pensioner member's employment is not employment to which the pensioner member was transferred as a result of a transfer of an undertaking to the pensioner member's employer;
- (c) the pensioner member's pension is a pension under—



- (i) regulation 90;
  - (ii) regulation 94; or
  - (iii) regulation 81; and
- (d) the pensioner member has not reached normal pension age.
- (2) In this Part “NHS employment” includes—
  - (a) employment in which a person of a category or description listed in Schedule 6 is engaged if the scheme manager has made a determination under section 25(5) of the 2013 Act in respect of the person; and
  - (b) employment to which a corresponding health service scheme applies.
- (3) In this Chapter—
  - (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”;
  - (d) the employment in which the employed pensioner is employed is referred to as the “new employment”.
- (4) For the purposes of this Chapter it is immaterial whether or not the employed pensioner is an active member of this scheme in the new employment.
- (5) This Chapter does not apply to a person who is a pensioner member of this scheme if—
  - (a) the person is employed by an independent provider—
    - (i) on the day the provider’s status as an employing authority takes effect in accordance with regulation 152 (the effective date); and
    - (ii) on the day immediately before the effective date; and
  - (b) any of paragraphs (6) to (8) apply to the person.
- (6) This paragraph applies to a person who is not eligible to be an active member of this scheme on the effective date and remains ineligible to be such a member.
- (7) This paragraph applies to a person who exercises an option not to re-join this scheme which takes effect from the effective date and has not been cancelled.
- (8) This paragraph applies to a person who—
  - (a) is not eligible to re-join this scheme on the effective date;
  - (b) becomes eligible to do so on the day immediately after the first anniversary of the person entering NHS employment in accordance with regulation 95(5)(b) (the eligibility day); and
  - (c) exercises an option not to re-join this scheme that takes effect from the eligibility day which has not been cancelled.

## **Information**

- 102.**—(1) A person who becomes an employed pensioner must—
- (a) inform the employed pensioner’s employer in the new employment and any other specified person that the old service pension is payable; and
  - (b) where requested, provide specified information about the employed pensioner’s relevant income in the new employment to the scheme manager or a specified person.

- (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 specified person that the old service pension is payable;
  - (b) where requested, provide specified information about the employed pensioner's relevant income in the other new employment to the scheme manager or a specified person.
- (3) In this regulation, "specified" means specified by the scheme manager.
- (4) Relevant income must be construed in accordance with regulation 104.

### **Reduction of pension**

**103.**—(1) If the condition in paragraph (2) is met, the amount of the old service pension for a scheme year is reduced.

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed person's previous earnings.

(3) The amount of the reduction under paragraph (1)—

- (a) is equal to the excess; but
- (b) must not exceed the enhancement amount.

(4) Relevant income and the enhancement amount must be construed in accordance with regulation 104.

(5) Previous earnings must be construed in accordance with regulations 105 and 106.

(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a scheme year, the amount of the employed pensioner's previous earnings must be reduced proportionately.

(7) If the employed pensioner has a guaranteed minimum under section 14 of the 1993 Act<sup>(27)</sup> in relation to the old service pension, nothing in this regulation requires the reduction of that pension below the amount of the guaranteed minimum.

### **Relevant income and enhancement amount**

**104.**—(1) An employed pensioner's relevant income for a scheme year is the aggregate of—

- (a) the amount of earnings received by the employed person during the year from the new employment; and
- (b) the enhancement amount.

(2) The enhancement amount is the difference between—

- (a) the amount of the old service pension for that scheme year; and
- (b) the amount the pension would have been had it been payable under regulation 79 (early retirement).

(3) If the old service pension is payable under regulation 90 or 94 (ill-health pensions) to an employed pensioner who had not attained normal minimum pension age at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)—

<sup>(27)</sup> Section 14 has been amended by sections 151 and 177 of, and paragraphs 27(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995 (c.26), section 1(1) of, and paragraph 38(a) to (c) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), section 456 of, and paragraphs 1 and 22(1) and (3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c.29), and is prospectively amended by section 24(1) of, and paragraphs 1 and 15(1) to (3) of Schedule 13 to, the Pensions Act 2014 (c.19).

- (a) the fact that entitlement to a pension under regulation 79 depends on reaching that age is ignored; but
  - (b) the employed pensioner's actual age at the relevant time is taken into account in determining the reduction to be made under Part 3 of Schedule 13.
- (4) If the old service pension is an ill-health pension at Tier 2, 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 79.
- (5) If the employed pensioner exercised the option under regulation 77 (conversion of part of pension into lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.
- (6) If the employed pensioner exercised the option under regulation 51 (election to allocate pension) in relation to the old service pension, the resulting reduction is taken into account for the purpose of this regulation.
- (7) References to the amount of a pension for a scheme year are to its amount for that year after any increases payable in respect of the pension under the Pensions (Increase) Act 1971(28), including increases that would have been payable in respect of an amount not paid because of a reduction ignored under paragraph (5).
- (8) For the purposes of paragraph (1)(a), the employed pensioner is assumed to be an active member of this scheme in the new employment.

### **Previous earnings: general**

- 105.**—(1) For the purposes of this Chapter, an employed pensioner's previous earnings is construed in accordance with this regulation.
- (2) If the employed pensioner's old employment was neither as a practitioner nor as a non-GP provider, the previous earnings is the greater of—
- (a) the optimum re-valued pensionable earnings in the old employment; and
  - (b) the annual rate of pay for the old employment at the time it ceased.
- (3) If the employed pensioner's old employment was as a practitioner or non-GP provider the previous earnings is the average of the annual amounts of the person's re-valued pensionable earnings in respect of practitioner service.
- (4) The optimum re-valued pensionable earnings is the re-valued pensionable earnings for the scheme year in the earnings reference period for which the employed pensioner has the greatest amount of re-valued pensionable earnings.
- (5) The annual rate of pay is the sum of—
- (a) the annual rate of so much of the employed pensioner's pensionable earnings immediately before the old service pension became payable as consisted of salary, wages, or 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 earnings.
- (6) The amount to be taken as the employed pensioner's previous earnings must be adjusted in each scheme year by increasing it by the same amount as that by which an annual pension equal

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(28) 1971 c.56.

to that amount would have been increased under the Pensions (Increase) Act 1971 at 6th April in that scheme year if—

- (a) the pension was eligible to be so increased; and
- (b) the beginning date for the pension were the same as the beginning date for the old service pension.

(7) In this regulation and regulation 106—

“re-valued pensionable earnings” means, in relation to each scheme year in the earnings reference period, the pensionable earnings for that year increased up to the beginning date for the old service pension by the rate of change in prices specified by the Treasury by order under section 9 of the 2013 Act; and

“the earnings reference period” is the period ending on the last day of the scheme year immediately preceding the scheme year in which the employed pensioner left the old employment and starting on the later of—

- (a) the first day of the scheme year in which the employed pensioner first joined this scheme; and
- (b) the first day of the tenth scheme year preceding the scheme year in which the employed pensioner left the old employment.

(8) In paragraph (6) the beginning date, in relation to a pension, is the date on which it is deemed to begin for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) of that Act<sup>(29)</sup>).

#### **Previous earnings: continuing and concurrent employments**

**106.**—(1) This regulation applies if an employed pensioner has held one or more other NHS employments at the same time as the old employment.

(2) If the employed pensioner’s old employment was neither as a practitioner nor as a non-GP provider, the previous earnings is the amount determined under regulation 105 increased as follows—

- (a) if the person holds a continuing non-practitioner employment on becoming entitled to the old service pension, the increase is the annual rate of earnings in respect of the continuing employment;
- (b) if the person holds a continuing practitioner employment on becoming entitled to the old service pension, the increase is the average of the annual amounts of the person’s re-valued pensionable earnings in respect of practitioner employment.

(3) If the employed pensioner’s old employment was as a practitioner, the previous earnings is the amount determined under regulation 105 increased as follows—

- (a) if the person becomes entitled to receive simultaneously a pension in respect of rights accrued from non-practitioner employment, the increase is the amount of previous earnings in respect of the non-practitioner employment;
- (b) if the person holds a continuing non-practitioner employment on becoming entitled to the old service pension, the increase is the annual rate of earnings of the continuing employment.

(4) Paragraph (5) applies if—

- (a) the employed pensioner held a part-time pensionable employment immediately before the old service pension becomes payable;

<sup>(29)</sup> 1971 c.56. Section 8(2) has been amended by section 1(5) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7) and section 39(1) and (4) of the Welfare Reform and Pensions Act 1999 (c.30).

- (b) in the 12 months preceding the date on which the old service pension becomes payable the person held concurrent part-time pensionable employment; and
  - (c) the employment mentioned in paragraph (b) terminated before the old service pension becomes payable.
- (5) The employed pensioner's previous earnings are increased by—
- (a) the annual rate of earnings in respect of the concurrent part-time pensionable employment; or
  - (b) if higher, that part of the pensionable earnings for the employment which is attributable to any part of the period of 12 months mentioned in paragraph (4)(b).
- (6) Paragraph (7) applies if—
- (a) in the period of 12 months before the date on which the old service pension becomes payable the employed pensioner was in pensionable employment as a practitioner; and
  - (b) the pensionable employment terminated before the old service pension became payable.
- (7) The previous earnings are increased by the average of the annual amounts of the person's re-valued pensionable earnings in respect of the employment mentioned in paragraph (6).
- (8) Paragraph (9) applies if—
- (a) a practitioner becomes entitled to payment of a pension under this scheme;
  - (b) in the 12 months before the entitlement arises the practitioner held concurrent pensionable non-practitioner employment; and
  - (c) the employment is terminated before the pension becomes payable.
- (9) The previous earnings are increased by—
- (a) the annual rate of earnings in respect of the employment mentioned in paragraph (8); or
  - (b) if higher, that part of the pensionable earnings for the employment which is attributable to any part of the period of 12 months mentioned in paragraph (8)(b).
- (10) Non-practitioner employment is employment which is neither as a practitioner nor as a non-GP provider, and references to practitioner employment must be construed accordingly.
- (11) Continuing employment is pensionable employment—
- (a) which a person held immediately before becoming entitled to payment of a pension under this scheme; and
  - (b) which the person continues to hold whether it is pensionable or not.

### **Multiple pensions**

**107.**—(1) This regulation applies if an employed pensioner is entitled to more than one old service pension within regulation 101(1)(c) in a scheme year.

(2) In regulation 103, for paragraphs (1) and (2) substitute—

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

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed person's previous earnings for all 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 the 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 104—

(a) for paragraph (2) substitute—

“(2) The enhancement amount is the difference between—

- (a) the aggregate amount of all old service pensions for that scheme year, and
- (b) the aggregate amount all of those pensions would have been if they had each been payable under regulation 79 (early payment of pension with actuarial reduction).”;

(b) subsequent references to the old service pension must be taken as references to every old service pension to which the substituted paragraph (2) applies.

(4) Regulation 108 applies as if references to an old service pension were references to every such pension.

### **Adjustment of reductions**

**108.**—(1) If the old service pension for a scheme year is being reduced under this Chapter, the scheme manager 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 scheme manager that—
  - (i) the amount of the reduction made for the year is, or may become, incorrect; or
  - (ii) no reduction should be made.

(2) If at any time during the scheme year it appears to the scheme manager as mentioned in paragraph (1)(b), the scheme manager must make such adjustments as appear to be required, whether by—

- (a) altering the amount of the reduction; or
- (b) repaying to the employed pensioner any amount that should not have been deducted from the pension.

(3) 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 scheme manager must repay the amount due to the employed pensioner.

(4) 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 103 was not made, the employed pensioner must repay the excess to the scheme manager.

(5) Paragraph (4) does not affect the right of the scheme manager to recover a payment or overpayment which is due.

## **CHAPTER 8**

### **Serious ill health option**

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

**109.**—(1) An active member, a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the scheme manager is satisfied that the conditions for the lump sum to be a serious ill-health lump sum for the purposes of the 2004 Act will be met (see paragraph 4 of Schedule 29 to that Act<sup>(30)</sup>).

<sup>(30)</sup> Paragraph 4 of Schedule 29 has been amended by section 65 of, and paragraphs 23 and 28 of Schedule 16 to, the Finance Act 2011 (c.11).

(2) For the purposes of paragraph (1), a “relevant pension” is a pension payable to that member under regulation 73, 76, 90 or 94.

(3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 73 or 76, before or at the time when the pension becomes payable;
- (b) in the case of a pension payable under regulation 90 or 94, before the pension becomes payable to the member.

(4) An active member who has reached normal pension age 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 77 if at the appropriate time the member had become entitled to a pension under regulation 73; and
- (b) the annual rate of the pension to which the member would have been entitled under regulation 73 after exercising that option, multiplied by 5.

(5) An active member entitled to a pension under regulation 90 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 77 at the appropriate time; and
- (b) the annual rate of the pension to which the member is entitled under regulation 90 after exercising that option, multiplied by 5.

(6) A pension credit member entitled to a pension under regulation 76 who exercises the option is to be paid as soon as reasonably practicable, 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 77 at the appropriate time; and
- (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 76 after exercising the option multiplied by 5.

(7) A deferred member entitled to a pension under regulation 94 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 77 at the appropriate time; and
- (b) the annual rate of the pension to which the member is entitled under regulation 94 after exercising that option, multiplied by 5.

(8) “The appropriate time” means—

- (a) for the purposes of paragraphs (4) and (6), the time when the option under this regulation is exercised; and
- (b) for the purposes of paragraphs (5) and (7), the time payment of the pension under regulation 90 or, as the case may be, 94 would otherwise first be due.

(9) References to the annual rate of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act 1971(31), calculated as at the appropriate time.

(10) The option under this regulation may only be exercised by notice in writing to the scheme manager in such form as the scheme manager requires.

## CHAPTER 9

## Contracting out obligations

**Guaranteed minimum pension etc.**

**110.**—(1) If a member (M) has a guaranteed minimum under section 14 of the 1993 Act<sup>(32)</sup> in relation to benefits under this scheme, nothing in these Regulations—

- (a) permits or requires anything that would cause requirements made by or under that Act in relation to M and M's rights under this scheme not to be met in the case of M; or
  - (b) prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of M.
- (2) Paragraph (3) applies if apart from this regulation—
- (a) no pension would be payable to M under this scheme; or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum.
- (3) Where this paragraph applies, as the case may be—
- (a) a pension at a weekly rate equal to the guaranteed minimum is payable to M for life from the date on which M reaches State pension age; or
  - (b) pensions, the aggregate weekly rate of which is equal to the guaranteed minimum, are so payable.
- (4) If—
- (a) on reaching State pension age M is still in employment (whether or not it is scheme employment); and
  - (b) if it is not scheme employment, M consents to a postponement of M's entitlement under paragraph (3),

paragraph (3) does not apply until M leaves employment.

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

(6) If paragraph (4) or (5) applies, the amount of the guaranteed minimum to which M is entitled under this regulation is increased in accordance with section 15 of the 1993 Act.

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

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

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

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<sup>(32)</sup> Section 14 has been amended by sections 151 and 177 of, and paragraphs 27(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995 (c.26), section 1(1) of, and paragraph 38(a) to (c) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), section 456 of, and paragraphs 1 and 22(1) and (3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c.29), and is prospectively amended by section 24(1) of, and paragraphs 1 and 15(1) to (3) of Schedule 13 to, the Pensions Act 2014 (c.19).



- (a) all the person's rights to benefits under this scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 9(2B) of the 1993 Act<sup>(33)</sup> ("the person's contracting-out rights"), have been transferred under Part 7 (transfers); or
- (b) the person has no rights to benefits under this scheme apart from the person's contracting-out rights.

(9) If paragraph (8) 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 9(2B) of the 1993 Act,

but a person falling within paragraph (8) is not to be regarded as a pensioner for the purposes of Part 6 (survivor benefits).

(10) Paragraphs (2) to (9) 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 paragraph 12(2)(b) of Schedule 3 (Official Secrets Acts offences) is committed;
- (b) a pension that is commuted under regulation 109 (option for members in serious ill- health to exchange whole pension for lump sum); or
- (c) a pension that is commuted under paragraph 6 of Schedule 3 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(34)</sup> are met,

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

(11) In this regulation—

- (a) "scheme employment", in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of this 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 77 (option to exchange part of pension for lump sum); and
  - (iii) before the subtraction of any amount allocated under regulation 51 (election to allocate pension).

## CHAPTER 10

### Pension debit members

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

**111.** The benefits to which a pension debit member is entitled under this Part are subject to reduction pursuant to section 31 of the 1999 Act.

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<sup>(33)</sup> Section 9(2B) was inserted by section 136(3) of the Pensions Act 1995 (c.26) and amended by section 1(1) of, and paragraph 35(1) and (2) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2). It is prospectively repealed by section 24(1) of, and paragraphs 1 and 9 of Schedule 13 to, the Pensions Act 2014 (c.19).

<sup>(34)</sup> Regulation 60 was substituted by article 8(1) and (10) of S.I. 2006/744 and amended by S.I. 2006/1337, 2009/2930 and 2010/499.

## PART 6

### Survivor benefits

#### CHAPTER 1

##### Adult survivor

#### **Lump sum on death**

**112.** A lump sum is payable in accordance with Schedule 14 in respect of the death of—

- (a) an active member;
- (b) a deferred member;
- (c) a pensioner member;
- (d) a recent leaver (within the meaning of that Schedule);
- (e) a re-employed pensioner (within the meaning of that Schedule);
- (f) a partial retirement pensioner (within the meaning of that Schedule); or
- (g) a pension credit member.

#### **Surviving adult dependant pension**

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

(2) In this Part, “surviving adult dependant” means, in relation to a deceased member or former member—

- (a) the surviving spouse;
  - (b) the surviving civil partner; or
  - (c) a surviving nominated partner.
- (3) For the rate at which the pension is payable, see regulations 115 to 119.

#### **Surviving nominated partner**

**114.—**(1) A person is a surviving nominated partner in relation to a member if—

- (a) the person and the member jointly made and signed a declaration in such form as the scheme manager requires that remains effective at the member’s death; and
  - (b) the person satisfies the scheme manager 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 spouses 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 scheme manager in such form as the scheme manager requires or is willing to accept;
  - (b) the member makes a further declaration for the purposes of that paragraph; or

- (c) the person or the member marries or forms a civil partnership.

#### **Amount of pension: survivor of active member**

**115.**—(1) This regulation applies in relation to the surviving adult dependant of an active member.

(2) Paragraph (4) applies in respect of a pension payable during the initial period if the amount found under that paragraph is greater than the amount payable if this paragraph did not apply.

(3) In any other case, the rate of pension is determined by whichever paragraphs (5), (6) and (8) applies to the member.

(4) The rate of pension payable under regulation 113 is equal to—

- (a) if the member was in non-practitioner employment, the rate of the member's pensionable earnings at the time of death;
- (b) if the member was a practitioner or non-GP provider, the rate of the member's pensionable earnings during the last complete quarter before the member's death,

plus, in either case, if the member had made an additional pension election under regulation 55(3) (b) (self and survivor), 37.5% of the amount of the additional pension to which the member was entitled at the date of death.

(5) If the member dies with not less than 2 years of qualifying service, the annual amount of pension payable under regulation 113 is equal to—

- (a) if the member has not reached the prospective normal pension age, 33.75% of the notional Tier 2 IHP;
- (b) if the member has reached the prospective normal pension age, 33.75% of the notional age retirement pension.

(6) If the member dies with less than 2 years of qualifying service having reached the prospective normal pension age, the annual amount of pension payable under regulation 113 is equal to 33.75% of the notional age retirement pension.

(7) This paragraph applies if—

- (a) the member dies with less than 2 years' qualifying service before reaching the prospective normal pension age; and
- (b) the surviving adult dependant has a guaranteed minimum pension under section 17 of the 1993 Act in relation to benefits in respect of the deceased member under this scheme.

(8) If paragraph (7) applies—

- (a) the annual amount of the pension payable under regulation 113 is equal to the guaranteed minimum pension; but
- (b) sub-paragraph (a) does not apply if the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving adult dependant is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act(35).

(9) In this regulation—

“the initial period” is the period of six months starting on the day after the member's death;

“the notional Tier 2 IHP” is the amount of pension the member would have received if, at the date of death, the member had become entitled to a pension under regulation 90(1)(b)—

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(35) Section 55(2) was substituted by section 141(1) of the Pensions Act 1995 (c.26) and amended by section 18 of, and paragraph 7(1)(a) of Schedule 2 to, the Welfare Reform and Pensions Act 1999 (c.30) and sections 15(3)(a) and 27(2) of, and paragraphs 1 and 26 of Schedule 4 and Part 6 of Schedule 7 to, the Pensions Act 2007 (c.22), and is prospectively repealed by section 24(1) of, and paragraphs 1 and 37 of Schedule 13 to, the Pensions Act 2014 (c.19).

- (a) disregarding the amount of any additional pension taken into account for the purposes of regulation 92(1)(c); and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount;

“the notional age retirement pension” is the amount of pension the member would have received if, at the date of death, the member had become entitled to a pension under regulation 73 (ignoring any increase under regulation 75)—

- (a) disregarding the amount of any additional pension taken into account for the purposes of paragraph 1(d) of Schedule 13; and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount;

“non-practitioner employment” is employment other than as a practitioner or a non-GP provider.

#### **Amount of pension: survivor of pensioner member**

**116.**—(1) This regulation applies in relation to the surviving adult dependant of a pensioner member.

(2) Paragraph (3) applies in respect of a pension payable during the initial period if the amount found under that paragraph is greater than the sum of—

- (a) the amount payable if this paragraph did not apply; and
- (b) the amount of the pensions otherwise payable under Chapter 2.

(3) The rate of pension payable under regulation 113 is equal to the rate of the member’s pension in payment at the time of death.

(4) If paragraph (3) does not apply, the rate of pension payable under regulation 113 is equal to the sum of—

- (a) 33.75% of the pension to which the member was entitled at the date of death (disregarding any additional pension); and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 37.5% of the amount of the additional pension to which the member was entitled at the date of death.

(5) In calculating the amount of a pension pursuant to paragraph (3) the following must be ignored—

- (a) the conversion amount (see paragraph 10 of Schedule 9);
- (b) any reduction in the rate of the member’s pension under regulation 103.

(6) In calculating the amount of a pension pursuant to paragraph (4) the following must be ignored—

- (a) the conversion amount (see paragraph 10 of Schedule 9);
- (b) any actuarial adjustment.

(7) The initial period is—

- (a) if the member leaves one or more eligible children who are dependent on the surviving adult dependant, the period of six months starting with the day after the member’s death;
- (b) in any other case, the period of three months starting with that day.

(8) For the purposes of paragraph (7), a child born after the member’s death is treated as having been born before it.

(9) Paragraph (10) applies if, pursuant to regulation 95(4), a member who was entitled to an ill health pension at Tier 2 ceases to be entitled to that pension and becomes entitled to an ill-health pension at Tier 1 and the member—

- (a) is in further NHS employment and dies before the end of the initial period for the purposes of regulation 95; or
- (b) is in further employment that is not NHS employment and dies before the end of a period of one year starting with the day on which the further employment ceased to be an excluded employment for the purposes of that regulation.

(10) The member’s pension referred to in paragraph (3) is the original ill-health pension at Tier 2.

### **Amount of pension: deferred members**

**117.**—(1) Paragraph (2) applies 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.

(2) The rate of the pension payable to the surviving adult dependant is equal to 33.75% of the member’s notional Tier 2 IHP.

(3) In the case of any other deferred member, the rate of pension payable is 33.75% of the amount of pension the member would have received if, at the date of death, the member had become entitled to a pension under regulation 73—

- (a) disregarding the amount of any additional pension taken into account for the purposes of paragraph 1(d) of Schedule 13; and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount.

(4) In paragraph (2), the notional Tier 2 IHP is the amount of pension the member would have received if, on the date the member’s pensionable service ceased, the member had become entitled to a pension under regulation 90(1)(b)—

- (a) disregarding the amount of any additional pension taken into account for the purposes regulation 92(1)(c); and
- (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), adding 37.5% of that amount.

(5) In this regulation, “the notional Tier 2 IHP” has the same meaning as in regulation 115(9).

### **Recent leavers**

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

- (a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 17 of the 1993 Act<sup>(36)</sup> in relation to benefits in respect of the recent leaver under this scheme; and
- (b) the leaver has died before reaching the normal pension age.

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<sup>(36)</sup> Section 17 has been amended by section 1(1) of, and paragraph 39 of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), sections 56 and 85 of, and paragraph 1 of Schedule 5 and 3(4) of Schedule 9 to, the Child Support, Pensions and Social Security Act 2000 (c.19), section 284(2) of the Pensions Act 2004 (c.35), section 14(2) of the Pensions Act 2007 (c.22), section 11(4) of, and paragraphs 18 and 20(1), (2)(b), (3), (5) and (6) of Schedule 4 to, the Marriage (Same Sex Couples) Act 2013 (c.30) and S.I. 2005/2050 and 2014/560, and is prospectively amended by section 24(1) of, and paragraphs 1 and 17 of Schedule 13 to, the Pensions Act 2014 (c.19).

(2) The surviving spouse or civil partner is entitled to a pension payable for life of an amount equal to the recent leaver's guaranteed minimum pension (disregarding any additional pension).

(3) Paragraph (2) does not apply if the Secretary of State's liability to provide a guaranteed minimum pension in respect of the surviving spouse or civil partner is discharged by the payment of a contributions equivalent premium under section 55(2) of the 1993 Act<sup>(37)</sup>.

(4) 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 neither qualified for a retirement pension pursuant to regulation 72 nor is a pensioner member because of rights resulting from that employment; and
- (c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

### **Re-employed pensioners: adult survivor pensions in initial period**

**119.**—(1) This regulation applies if, apart from this regulation, both regulations 115(4) and 116(3) apply on the death of a member.

(2) If this regulation applies, the rate of pension payable by virtue of these regulations during the initial period (as defined in the respective regulations) is the rate provided in paragraph (3).

(3) For the relevant initial period, the rate of pension payable is equal to the sum of amounts A and B.

(4) Amount A is, in the case of a deceased active member, the rate of the deceased's pensionable earnings at the time of death.

(5) Amount B is the rate of the deceased member's pension payable at the time of death after taking account of—

- (a) the conversion amount (see paragraph 10 of Schedule 9);
- (b) any reduction in the rate of the member's pension under regulation 103.

(6) Paragraph (4) 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 Chapter 2,

would be greater.

### **Polygamous marriage**

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

- (a) a member dies without leaving a surviving adult dependant;
- (b) at the date of death, the member was married to one or more persons under a law which permits polygamy; and
- (c) had the member left a surviving adult dependant any benefit would have been payable to that dependant as such.

(2) The benefit mentioned in paragraph (1)(c) is payable—

- (a) if there is only one such person mentioned in paragraph (1)(b), to that person;

<sup>(37)</sup> Section 55(2) was substituted by section 141(1) of the Pensions Act 1995 (c.26) and amended by section 18 of, and paragraph 7(1)(a) of Schedule 2 to, the Welfare Reform and Pensions Act 1999 (c.30) and sections 15(3)(a) and 27(2) of, and paragraphs 1 and 26 of Schedule 4 and Part 6 of Schedule 7 to, the Pensions Act 2007, and is prospectively repealed by section 24(1) of, and paragraphs 1 and 37 of Schedule 13 to, the Pensions Act 2014.

- (b) if there are two or more such persons, to those persons in equal shares.
- (3) Such a person's share of a pension does not increase on the death of any other such person.

## CHAPTER 2

### Child survivor

#### **Surviving child's pension**

- 121.**—(1) This regulation applies if—
- (a) a member or recent leaver dies leaving an eligible child; or
  - (b) an eligible child of the member or recent leaver is born after the date of death.
- (2) A pension is payable in respect of an eligible child.
- (3) A pension ceases to be payable if the child ceases to be an eligible child.
- (4) If there are two or more eligible children, the share of the pension to which each of them is entitled is determined in accordance with guidance published by the scheme manager for the purposes of this paragraph.
- (5) An amount payable to an eligible child is payable—
- (a) to the eligible child; or
  - (b) if the scheme manager so decides, to another person for the eligible child.
- (6) Paragraph (7) applies to an eligible child if—
- (a) at the date of death, the child is dependent on an adult; and
  - (b) the adult is entitled to a pension under regulation 113.
- (7) For any period in which the surviving adult's pension is payable at the rate specified in regulation 116(3) or 119(5), the eligible child is entitled to payment only of so much of the pension as is attributable to an additional pension.
- (8) Paragraph (9) applies if an eligible child—
- (a) is incapable for any period of earning a living because of a physical or mental infirmity; and
  - (b) for a period exceeding one month, is maintained out of money provided by Parliament in a hospital or other institution.
- (9) No pension is payable in respect of the child for any part of the period after the first month.
- (10) If, apart from this paragraph, multiple pensions would be payable in respect of a person as an eligible child of three or more persons each of whom was a deceased member or recent leaver—
- (a) the entitlements to the pensions are treated as entitlement on the death of only two of those persons; and
  - (b) the amount payable is equal to the sum of the two pensions which are the highest.

#### **Eligible child**

- 122.**—(1) A person is an eligible child in relation to a deceased member or recent leaver (DMR) if the child—
- (a) meets the relationship condition;
  - (b) meets the age or health dependency condition; and
  - (c) meets the birth and dependency condition.
- (2) A person meets the relationship condition if the person is any of the following—

- (a) a natural child or grandchild of the DMR;
  - (b) an adopted child of the DMR who was adopted while the DMR was an active member;
  - (c) a step-child of the DMR whose natural or adoptive parent is the DMR's surviving spouse or civil partner from a marriage entered into or a civil partnership formed, while the DMR was an active member;
  - (d) a person whose natural or adoptive parent is the DMR's surviving nominated partner if, at the time the DMR ceased to be an active member, the DMR was living with the partner as mentioned in regulation 114(1)(b)(i);
  - (e) a brother or sister, or child of a brother or sister, of—
    - (i) the DMR; or
    - (ii) the DMR's spouse, civil partner or nominated partner;
  - (f) a half-brother or half-sister, or child of a half-brother or half-sister of—
    - (i) the DMR member; or
    - (ii) the DMR member's spouse, civil partner or nominated partner;
  - (g) a person who the scheme manager believes the DMR intended, at the time the DMR ceased to be an active member, to adopt;
  - (h) a person who at the time the DMR ceased to be an active member had been dependent on the DMR for—
    - (i) two years; or
    - (ii) if less, half the person's life.
- (3) A person meets the age or health dependency condition if—
- (a) the person has not attained the age of 23; or
  - (b) the scheme manager believes—
    - (i) that the person was financially dependent on the DMR at the date of death because of the person was incapable of earning a living in consequence of physical or mental impairment; and
    - (ii) that the person continues to be incapable of earning a living in consequence of the impairment.
- (4) A person meets the birth and dependency condition if—
- (a) the person was born before the DMR ceased to be an active member and—
    - (i) was dependent on the DMR at the date of death; and
    - (ii) if the date of death was after the DMR ceased to be an active member, was dependent on the DMR at the time the DMR ceased to be an active member; or
  - (b) the person was born not more than one year after the DMR ceased to be an active member and—
    - (i) was dependent on the DMR both at birth and at the date of death; or
    - (ii) if the person was born after the DMR's death, would have been dependent on the DMR had the DMR not died before the person's birth.

**Amount of child pension: deceased active member**

**123.**—(1) This regulation determines the annual amount of pension payable under regulation 121 if, at the date of death, the deceased was—

- (a) an active member of this scheme; and



- (b) not also a pensioner member of this scheme.
- (2) The amount, unless paragraph (6) or (7) applies, is the appropriate fraction of—
- the basic death pension; plus
  - if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 75% of the amount of the additional pension.
- (3) The basic death pension is found by applying the following formula:

$$\left( FP + \frac{A \times B}{C} - A \right) \times 67.5\%$$

where—

FP is the amount of full retirement earned pension which, if at the date of death the deceased had become entitled to an ill-health pension, would be specified in the pensioner member's account;

A is the aggregate of the amounts of all of the member's pensions from pensionable service on the day after the member's last day of pensionable service (L+1)—

- disregarding any additional pension; and
- including any increases applied by virtue of the Pensions (Increase) Act 1971(38);

B is the period counted in days which is the greater of—

- the aggregate of the total period of pensionable service counted in days over which the pensions referred to in A were accrued and 50% of the length of the period starting on L +1 and ending on the day the deceased would have reached prospective normal pension age; and
- 10 years;

C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued,

and for the purposes of B and C, any part of a day is taken to be a whole day.

(4) The appropriate fraction is shown in column 3 of the following table against the description of circumstances in columns 1 and 2 to which it relates.

**Table**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Surviving adult: pension entitlement and relationship to eligible child</i>	<i>Number of eligible children</i>	<i>Appropriate fraction</i>
A. There is a surviving parent or a surviving spouse or civil partner of a parent and a surviving adult's pension is payable under regulation 113	One eligible child	1/4
	Two or more eligible children	1/2
B. There is a surviving parent or a surviving spouse or civil partner of a parent but no pension is payable under regulation 113	One eligible child	1/3
	Two or more eligible children	2/3
C. There is no surviving parent or spouse or civil partner of parent.	One eligible child	1/3

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Surviving adult: pension entitlement and relationship to eligible child</i>	<i>Number of eligible children</i>	<i>Appropriate fraction</i>
	Two or more eligible children	$\frac{2}{3}$

- (5) Paragraph (6) applies if—
- a surviving adult dependent's pension is payable under regulation 113; and
  - there is an eligible child who is not dependent on the person entitled to the pension.
- (6) The rate of pension payable in respect of the child for the first three months after the deceased's death is equal to—
- if the deceased member was in non-practitioner employment, the rate of the member's pensionable earnings at the time of death;
  - if the deceased member was a practitioner or non-GP provider, the average rate of the member's pensionable earnings during the last complete quarter before the member's death.
- (7) Where entry B or C of column 1 of the table in paragraph (4) applies, the rate of the pension in respect of an eligible child for the period of six months starting with the deceased's death is equal to—
- if the deceased member was in non-practitioner employment, the rate of the member's pensionable earnings at the time of death;
  - if the deceased member was a practitioner or non-GP provider, the average rate of the member's pensionable earnings during the last complete quarter before the member's death.
- (8) Non-practitioner employment is employment other than as a practitioner or non-GP provider.

#### **Amount of child pension: deceased pensioner member**

- 124.**—(1) This regulation determines the annual amount of pension payable under regulation 121 if, at the date of death, the deceased—
- was a pensioner member of this scheme; and
  - was not also an active member.
- (2) The amount is the appropriate fraction of—
- the basic death pension; plus
  - if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 75% of the amount of the additional pension.
- (3) The basic death pension is the greater of—
- 67.5% of the deceased's annual pension (disregarding any additional pension); and
  - the amount found by applying the following formula:

$$\left( \frac{A}{C} \times 3650 \right) \times 67.5\%$$

where—

A is the deceased's annual pension;

C is the total period of pensionable service counted in days over which the pensions aggregated to find A were accrued,

and for the purposes of C, any part of a day is taken to be a whole day.

- (4) The appropriate fraction is as determined by regulation 123(4).
- (5) Paragraph (6) applies if—
  - (a) a surviving adult dependent's pension is payable under regulation 113; and
  - (b) there is an eligible child who is not dependent on the person entitled to the pension.
- (6) The rate of pension payable in respect of the child for the first three months after the deceased's death is equal to the rate of the member's pension at the date of death.
- (7) Where entry B or C of column 1 of the table in paragraph (4) of regulation 123 applies, the rate of the pension in respect of an eligible child for the period of six months starting with the deceased's death is equal to the greater of—
  - (a) the rate of the member's pension at the date of death disregarding any reduction under Chapter 7 of Part 5 (abatements); and
  - (b) the amount of child pension that would otherwise be payable under these Regulations.
- (8) A reference to the deceased's pension for the purposes of paragraph (3)(a) and (b) is a reference to the amount the deceased's pension would have been if it was calculated—
  - (a) without subtracting the conversion amount (see paragraph 10 of Schedule 9); and
  - (b) in the case of a pension which was payable to the deceased pursuant to regulation 79, 82 or 84, without the reduction under paragraph 6(1)(b) or 7(1)(b) of Schedule 13.

**Amount of child pension: deceased deferred member**

- 125.**—(1) This regulation determines the annual amount of pension payable under regulation 121 if, at the date of death, the deceased—
- (a) was a deferred member of this scheme; and
  - (b) was not also an active member or a pensioner member.
- (2) The amount is the appropriate fraction of—
- (a) the basic death pension; plus
  - (b) if the member had made an additional pension election under regulation 55(3)(b) (self and survivor), 75% of the amount of the additional pension.
- (3) The basic death pension is—
- (a) if the date of death is before the end of the period 12 months starting on the day after the deceased ceased to be an active member, the amount found by applying the formula in regulation 123(3);
  - (b) in any other case, the greater of—
    - (i) 67.5% of the pension which would have been payable if, at the date of death, the deceased had become entitled to a pension under regulation 73, but in calculating that pension under paragraph 1 of Schedule 13 sub-paragraph (d) must be ignored; and
    - (ii) the amount found by applying the formula in regulation 124(3).
- (4) The appropriate fraction is shown in column 3 of the following table against the description of circumstances in columns 1 and 2 to which it relates.

**Table**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Surviving adult: pension entitlement and relationship to eligible child</i>	<i>Number of eligible children</i>	<i>Appropriate fraction</i>
A. There is a surviving parent or a surviving spouse or civil partner of a parent and a surviving adult's pension is payable under regulation 113	One dependent child	$\frac{1}{4}$
	Two or more eligible children	$\frac{1}{2}$
B. In any other case	One eligible child	$\frac{1}{3}$
	Two or more eligible children	$\frac{2}{3}$

**Amount of child pension: recent leavers**

**126.**—(1) This regulation applies to determine the annual amount of pension payable under regulation 121 if, at the date of death, the deceased was a recent leaver (within the meaning of regulation 118(4)).

- (2) The amount is the appropriate fraction of the basic death pension.
- (3) The basic death pension is the amount found by applying the formula in regulation 123(3).
- (4) The appropriate fraction is as determined by regulation 125(4).

**Power to increase pension for children not maintained by surviving parent etc.**

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

- (a) a member dies leaving an eligible child;
- (b) there is a surviving parent of the eligible child or a surviving spouse or civil partner of a parent of the eligible child; and
- (c) the eligible child is not maintained by the surviving parent, spouse or partner.

(2) The scheme manager may increase the amount of the pension that would otherwise be payable under this Chapter.

(3) The increased amount must 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 child pension: re-employed pensioners**

**128.**—(1) This regulation applies to determine the annual amount of pension payable under regulation 121 if, at the date of death, the deceased was—

- (a) an active member of this scheme; and
- (b) a pensioner member of this scheme.

(2) If there is no surviving adult, in relation to the period of 6 months starting on the day after the date of death, the rate of pension is equal to the sum of—

- (a) the rate of the deceased's pensionable earnings at the date of death; and
- (b) the rate of the pension being received by the deceased at the date of death.

(3) In paragraph (2), rate of pensionable earnings for a member who was a practitioner or non-GP provider is the rate during the last complete quarter before the member's death.

(4) Apart from paragraph (2), the amount is the appropriate fraction of—

- (a) if, at the date of death, the deceased has not reached normal pension age, the amount found by applying the formula in regulation 123(3);
  - (b) in any other case, 67.5% of the pension to which the deceased would have been entitled in accordance with regulation 74 (see paragraph 1 of Schedule 13).
- (5) The appropriate fraction is as determined by regulation 123(4).
- (6) Paragraph (7) applies if an eligible child was dependent both—
- (a) at the time when the pensionable service in respect of which the pension is payable ceased; and
  - (b) at the date of death.
- (7) The amount is the sum of—
- (a) the amount payable under regulation 123 in respect of the deceased’s new employment—
    - (i) if paragraph (1)(b) of that regulation did not apply; and
    - (ii) ignoring paragraph (b) of element B in the formula in paragraph (3) of that regulation; and
  - (b) the amount found under regulation 124(3)(a) in respect of the deceased’s old employment if paragraph (1)(b) of that regulation did not apply.
- (8) For the purposes of paragraph (7)—
- (a) if the aggregate of the periods of pensionable service taken into account in determining the amounts under sub-paragraphs (a) and (b) is less than 10 years, the period to be taken into account for the purposes of paragraph (a) must be increased by a period equal to the length of the difference;
  - (b) “new employment” and “old employment” must be construed in accordance with Chapter 7 of Part 5.

### **Provisional awards of eligible child’s pensions: later adjustments**

**129.**—(1) This regulation applies where—

- (a) an active member, deferred member, recent leaver or pensioner member of this scheme has died;
- (b) a pension is paid in respect of one or more persons under this Chapter on the basis that they were eligible children as at the date of the member’s death and that there were then no other eligible children; and
- (c) it later appears that—
  - (i) a person in respect of whom such a pension has been paid was not an eligible child on the date of death;
  - (ii) on that date a further person was an eligible child; or
  - (iii) a child who was born after the member’s death is an eligible child.

(2) The scheme manager may adjust the amount of pension payable in respect of each eligible child to take account of the matters referred to in paragraph (1)(c), as applicable.

(3) Paragraph (2) does not affect any right the scheme manager has to recover a payment or an overpayment.

## CHAPTER 3

### General

#### **Suspension and recovery of pensions paid under this Part**

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

- (a) on a member’s death a pension has been awarded and paid under this Part; and
- (b) it later appears to the scheme manager that the member or the person to whom the pension has been paid knowingly made a false declaration or deliberately suppressed a material fact in connection with the award.

(2) The scheme manager may—

- (a) cease paying the pension; and
- (b) recover any payment made under the award.

(3) Paragraph (2) does not affect any right the scheme manager has to recover a payment or an overpayment.

## PART 7

### Transfers

#### CHAPTER 1

##### Preliminary

#### **Application of Part**

**131.**—(1) This Part—

- (a) supplements the rights conferred by or under Chapter 4 of Part 4 of the 1993 Act (transfer values); and
- (b) is without prejudice to that Chapter or Chapter 5 of that Part (early leavers: cash transfer sums and contribution refunds).

(2) This Part applies in the case of a transfer to which the club transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) a provision of this Part otherwise requires, or
- (b) the arrangements themselves make different provision.

#### **Interpretation of Part**

**132.** In this Part—

“cash equivalent” means an amount calculated in accordance with regulations made under section 97 of the 1993 Act<sup>(39)</sup>;

“club scheme” means a registered occupational pension scheme (other than a connected scheme) that has agreed to make and receive transfer value payments under the club transfer arrangements;

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<sup>(39)</sup> Section 97 has been amended by section 173 of, and paragraph 4 of Schedule 6 to, the Pensions Act 1995 (c.26) and section 56 of, and paragraph 8(1) of Schedule 5 to, the Child Support, Pensions and Social Security Act 2000 (c.19).

“club transfer” means a transfer value payment made pursuant to club transfer arrangements; and “non-club transfer” must be construed accordingly;

“club transfer arrangements” means arrangements approved by the scheme manager as providing reciprocal arrangements between this scheme and other registered occupational pension schemes for making and receiving transfer value payments;

“club transfer earned pension” means the pension attributable to the receipt of a club transfer value;

“club transfer value”, in relation to an amount of accrued earned pension under this scheme or under another club scheme, means an amount calculated by the scheme manager—

- (a) in accordance with the club transfer arrangements; and
- (b) by reference to the guidance and tables provided by the Government Actuary for this purpose and that are in use on the date used for the calculation;

“guarantee date” has the meaning given by regulation 135(3);

“guaranteed cash equivalent”, in relation to accrued rights to benefits under this scheme, means the cash equivalent of those accrued rights as at the guarantee date, as specified in a statement of entitlement;

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

- (a) in the case of such a scheme established on, or after, 6th April 2006 is a registered pension scheme for the purposes of the 2004 Act and which the scheme manager agrees to recognise as a transferring scheme for the purposes of Part 7;
- (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 4 of Part 14 of the Income and Corporation Taxes Act 1988 (personal pension schemes)(40); and
  - (ii) on the 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“registered occupational pension scheme” means registered under Chapter 2 of Part 4 of the 2004 Act(41);

“statement of entitlement”, in relation to a member’s accrued rights to benefits under this scheme, means a statement by the scheme manager of the amount of the cash equivalent or club transfer value of those rights as at the guarantee date;

“transfer value”, in relation to accrued rights other than accrued earned pension which is the subject of a club transfer means—

- (a) for accrued rights to benefits under this scheme, an amount equal to the guaranteed cash equivalent of those accrued rights; and
- (b) for accrued rights under another pension scheme, an amount—
  - (i) determined by the scheme actuary of that scheme; and
  - (ii) specified in a statement of accrued rights provided by the scheme manager of that scheme;

“transfer value payment” means—

- (a) the payment of a transfer value or club transfer value under this Part; or

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(40) 1988 c.1. Chapter 4 was repealed by sections 1322 and 1326 of, and paragraphs 1 and 25 of Schedule 1 and Part 1 of Schedule 3 to, the Corporation Tax Act 2009 (c.4). For transitional provisions and savings see section 1325(1) of and Parts 1 and 2 of Schedule 2 to, that Act.

(41) Chapter 2 of Part 4 deals with registration of pension schemes for tax purposes.

- (b) the payment of a transfer value under Chapter 4 of Part 4 of the 1993 Act.

## CHAPTER 2

### Transfers values

#### SECTION 1

#### *Application of Chapter*

#### **Application of Chapter**

- 133.** This Chapter applies to the payment and receipt of transfer values.

#### SECTION 2

#### *Transfers out*

#### **Right to transfer value payment**

- 134.—**(1) This Section applies to a member (M) unless M is—

- (a) an active member;
- (b) a pensioner member in respect of the pension to which M has become entitled; or
- (c) a pension credit member in respect of rights that are directly attributable to a pension credit.

(2) If Chapter 4 of Part 4 of the 1993 Act (transfer values) applies to M (see section 93(1)(a) of the Act<sup>(42)</sup>), M 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 M under this scheme.

(3) If Chapter 5 of that Part applies to M (see section 101AA of that Act<sup>(43)</sup>), M is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) In any other case, M is entitled to require payment as mentioned in paragraph (2) as if the rights had accrued to or in respect of M by reference to the pensionable service M is entitled to count under this scheme (and references to M's accrued rights or benefits are to be read accordingly).

#### **Application for statement of entitlement**

**135.—**(1) A member (M) who requires a transfer value payment to be made must apply in writing to the scheme manager for a statement of entitlement.

(2) M may withdraw the application by notice in writing at any time before the statement of entitlement is provided.

- (3) The guarantee date is a date that—

- (a) is within the required period;
- (b) is chosen by the scheme manager;
- (c) is specified in the statement of entitlement; and
- (d) is not more than 10 days after the date on which M is provided with the statement of entitlement.

- (4) In paragraph (3), the required period is—

<sup>(42)</sup> Section 93(1)(a) was substituted by section 152(2) of the Pensions Act 1995 (c.26).

<sup>(43)</sup> Section 101AA was inserted by section 264 of the Pensions Act 2004 (c.35) and is prospectively amended by section 36(4) of the Pensions Act 2014 (c.19).



- (a) the period of 3 months beginning with the date of M's application for a statement of entitlement; or
  - (b) such longer period (not exceeding 6 months) beginning with that date as may reasonably be required if, for reasons beyond the control of the scheme manager, the information required to calculate the cash equivalent or club transfer value cannot be obtained.
- (5) For the purposes of paragraph (3)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday must be ignored.

### **Application for transfer value payment**

**136.**—(1) A member (M) who has applied for and received a statement of entitlement may apply in writing to the scheme manager for a transfer value payment to be made.

(2) The application must be made before the end of the period of 3 months starting with the guarantee date.

(3) On making the application M becomes entitled to payment of an amount equal, or amounts equal in aggregate, to—

- (a) the amount specified in the statement of entitlement; or
- (b) that amount subject to any increase specified in regulation 137(2).

(4) In this Part a payment under paragraph (3) is referred to as “the guaranteed cash equivalent transfer value payment”.

(5) The application—

- (a) must specify the pension scheme or other arrangement to which the payment should be applied; and
- (b) must meet such other conditions as are required by the scheme manager.

(6) The application may be withdrawn by notice in writing to the scheme manager unless, before the notice is given, 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.

### **Transfer value payments: time limits**

**137.**—(1) The guaranteed cash equivalent transfer value payment must be made not later than—

- (a) the end of the period of 6 months after the guarantee date; or
- (b) if earlier, the date on which the member attains normal pension age.

(2) If the payment is made after the time specified in paragraph (1)(a), the amount of the payment must be increased by the relevant amount.

(3) The relevant amount is—

- (a) if the amount specified in the statement of entitlement (SEA) is less than the amount it would have been if the guarantee date had been the date on which the payment is made, the amount of the difference;
- (b) if—
  - (i) the SEA is greater than the amount it would have been if the guarantee date had been the date on which the payment is made; and
  - (ii) there was no reasonable excuse for the delay in payment,

interest on the SEA calculated on a daily basis starting on the guarantee date and ending on the date the payment is made at an annual rate of 1% above the base rate.

(4) Paragraph (5) applies if—

- (a) disciplinary or court proceedings against M are started before the end of the period of 12 months starting with the date on which M leaves the employment which qualified M for being a member of this scheme; and
  - (b) it appears to the scheme manager that the proceedings may result in all or part of M's benefits being forfeited under paragraph 12 of Schedule 3.
- (5) The scheme manager may defer making a payment under this Section until the end of the period of 3 months starting on the day the proceedings (including any proceedings on appeal) are finally determined.
- (6) If a direction is given under paragraph 12 of Schedule 3 for the forfeiture of M's benefits, this regulation applies as if the SEA were reduced by an amount equal to the value of the benefits forfeited, as determined by the scheme actuary.
- (7) Paragraph (8) or (9) applies if M is not qualified for retirement benefits by virtue of regulation 72.
- (8) If M's application specifies that the guaranteed cash equivalent transfer value payment is made to a registered occupational pension scheme or a registered personal pension scheme, the application may be made only if—
- (a) M became a member of the other scheme before the end of the period of 12 months starting on the day after the leaving date; and
  - (b) the application is made not later than—
    - (i) the end of the period of 12 months starting on the day M became a member of the other scheme; or
    - (ii) if M became a member of the other scheme on or before the leaving date, the end of the period of 12 months starting on the day after the leaving date.
- (9) If paragraph (8) does not apply, M's application may only be made before the end of the period of 12 months starting on the day after the leaving date.
- (10) In paragraphs (8) and (9), the leaving date is the day on which M ceased to be in the pensionable service in which the rights accrued.
- (11) M may require the scheme manager to make a club transfer value payment only during the period of 12 months starting with the day on which M becomes eligible to be an active member of the scheme to which the payment is to be made.

### **How transfer value payments may be applied**

- 138.**—(1) If Chapter 4 of Part 4 of the 1993 Act applies to a member (M), M may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 95 of that Act<sup>(44)</sup>.
- (2) In any other case, M may require the scheme manager to apply the guaranteed cash equivalent transfer value payment only in one of the ways permitted under section 101AE of the 1993 Act<sup>(45)</sup>.
- (3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.
- (4) Benefits attributable to—
- (a) M's accrued rights to a guaranteed minimum pension; or

<sup>(44)</sup> Section 95 has been amended by section 173 of, and paragraph 3 of Schedule 6 to, the Pensions Act 1995 (c.26), sections 56 and 85 of, and paragraph 7 of Schedule 5 and Part 3(7) of Schedule 9 to, the Child Support, Pensions and Social Security Act 2000 (c.19) and article 121 S.I. 2001/3649.

<sup>(45)</sup> Section 101AE was inserted by section 264 of the Pensions Act 2004 (c.35).

(b) M's accrued rights attributable to service in a contracted-out employment (within the meaning of section 8 of the 1993 Act<sup>(46)</sup>) on or after 6th April 1997, may be excluded from the guaranteed cash equivalent payment if section 96(2) of the 1993 Act<sup>(47)</sup> applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the members other rights).

(5) A transfer payment may be made only to—

- (a) a pension scheme (other than a connected scheme) that is registered under Chapter 2 of Part 4 of the 2004 Act; or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) of that Act<sup>(48)</sup>).

### Calculating amounts of transfer value or club transfer value

**139.**—(1) The amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the scheme manager in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(49)</sup>.

(2) In determining the factors to be used in the calculation of the member's (M's) guaranteed cash equivalent, the scheme manager must take account of—

- (a) M's prospective normal pension age;
- (b) advice from the scheme actuary.

(3) If the amount calculated in accordance with paragraph (1) or (5) is less than M's minimum transfer value (if any), the amount of the transfer value payment is to be equal to that value.

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

- (a) any transfer value payments that have been made to this scheme in respect of M as a result of which M is entitled to count any pensionable service under this scheme by reference to which the accrued rights subject to the transfer are calculated; and
- (b) any contributions paid by M under Part 4 as a result of which M is entitled to count such service.

(5) If the transfer is a club transfer, the amount of the transfer value payment is calculated in accordance with the club transfer arrangements rather than paragraph (1).

(6) If a club transfer value is paid later than 6 months after the guarantee date, the amount of the club transfer value as specified in the statement of entitlement must be increased if necessary so that it is equal to the amount it would have been if the guarantee date had been the date on which the payment is made.

<sup>(46)</sup> Section 8 has been amended by sections 151 and 177 of, and paragraph 23(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995, section 1(1) of, and paragraph 34(a) and (b) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), section 15(3)(a) of, and paragraphs 1 and 3(1) to (4) of Schedule 4 to, the Pensions Act 2007 (c.22), section 4(1) of, and paragraphs 7 and 8(1) to (3) of Schedule 1 to, the National Insurance Contributions Act 2008 (c.16), section 11(4) of, and paragraphs 18 and 19 of Schedule 4 to, the Marriage (Same Sex Couples) Act 2013 (c.30) and article 2(1) of, and paragraph 1 of Schedule 1 to, S.I. 2005/2050, and is prospectively amended by section 15(3)(a) and section 27(2) of, and paragraphs 46 and 47 of Schedule 4 and Part 7 of Schedule 7 to the Pensions Act 2007 and section 24(1) of, and paragraphs 1, 2 and 7(1) to (5) of Schedule 13 to, the Pensions Act 2014 (c.19).

<sup>(47)</sup> Section 96(2) has been amended by section 151 of, and paragraph 63(a) of Schedule 5 to, the Pensions Act 1995, sections 18 and 88 of, and paragraph 3(2)(b) of Schedule 2 and Part 1 of Schedule 13 to, the Welfare Reform and Pensions Act 1999 (c.48), sections 15(3)(a) and 27(2) of, and paragraphs 1 and 29 of Schedule 4 and Part 6 of Schedule 7 to, the Pensions Act 2007 and article 5(1) and (14)(a)(ii) of S.I. 2011/1730, and is prospectively amended by section 24(1) of, and paragraphs 1 and 39 of Schedule 13 to, the Pensions Act 2014.

<sup>(48)</sup> Section 169(2) has been amended by section 53(2) and (3) of the Finance Act 2013 (c.29).

<sup>(49)</sup> S.I. 1996/1847, as amended by S.I. 1997/786 and 1613, 2003/1727, 2005/72, 686, 706 and 3377, 2006/744, 2007/60, 2008/1050 and 2450, 2009/615, 2011/1246, 2012/692 and 2013/459 and 2734.

**Effect of transfer-out**

**140.** If a transfer value payment is made under this Section in respect of a person's rights under the scheme, those rights are extinguished.

*SECTION 3**Transfers in***Right to apply for acceptance of transfer value payment**

**141.**—(1) An active member (M) may apply for a transfer value payment to be accepted from—

- (a) an appropriate registered occupational pension;
- (b) a registered personal pension scheme;
- (c) a registered buy-out policy;
- (d) a corresponding scheme.

(2) Paragraph (1) does not apply to M's rights—

- (a) under a free-standing AVC scheme to which paragraph (3) applies; or
- (b) that are directly attributable to a pension credit.

(3) This paragraph applies to—

- (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<sup>(50)</sup> (free-standing AVC schemes); and
  - (ii) became a registered scheme for the purposes of the 2004 Act by virtue of Schedule 36 to that Act; or
- (b) a scheme established on or after that date as a registered free-standing AVC scheme.

(4) An appropriate registered occupational pension scheme is a registered occupational pension scheme which is not—

- (a) a connected scheme;
- (b) a corresponding 1995 scheme; or
- (c) a corresponding 2008 scheme.

(5) In paragraph (1), “buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the 1993 Act<sup>(51)</sup> (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts).

(6) In paragraph (4)—

“a corresponding 1995 scheme” is a superannuation scheme provided under section 10 of the Superannuation Act 1972<sup>(52)</sup> and having effect in Scotland or a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(53)</sup>, the provisions of which the Secretary of State has determined correspond to the provisions of the 1995 Regulations; and

<sup>(50)</sup> Section 591 was repealed by section 326 of, and Part 3 of Schedule 42 to, the Finance Act 2004 (c.12) on 6th April 2006.

<sup>(51)</sup> Section 19 has been amended by S.I. 2001/3649, 2005/2050 and 2007/3014.

<sup>(52)</sup> 1972 c.11. Section 10 has been amended by sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 190 of, and paragraph 7 of Schedule 8 to, the Pension Schemes Act 1993 (c.48), section 27 of, and paragraphs 6 and 10 of Schedule 8 to, the Public Service Pensions Act 2013 (c.25) and article 108 of S.I. 2001/3649. Functions under section 10 in relation to Scotland were transferred to the Scottish Ministers by article 2 and Schedule 1 of S.I. 1999/1750.

<sup>(53)</sup> S.I. 1972/1073 (N.I. 10).

“a corresponding 2008 scheme” is a superannuation scheme provided under section 10 of the Superannuation Act 1972 and having effect in Scotland or a superannuation scheme provided under Article 12 of the Superannuation (Northern Ireland) Order 1972, the provisions of which the Secretary of State has determined correspond to the provisions of the 2008 Regulations.

### **Application procedure**

- 142.**—(1) An application under regulation 141—
- (a) must be 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) must be made before—
    - (i) the end of the period of one year starting on the day the member (M) becomes eligible to be an active member of this scheme; and
    - (ii) M attains normal pension age;
  - (d) if the scheme manager so requires, may be made only if M has requested a statement of entitlement; and
  - (e) must meet such other conditions as the scheme manager requires.
- (2) If the transfer is not a club transfer, a statement of entitlement—
- (a) is a statement of the increase to pensionable earnings and the service M will be entitled to count as a result of the transfer if the payment is accepted;
  - (b) must specify—
    - (i) the period within which the payment is to be accepted by scheme manager; and
    - (ii) the amount of increase to pensionable earnings calculated in accordance with guidance and tables provided by the scheme actuary for the purpose.
- (3) If the transfer is a club transfer, a statement of entitlement—
- (a) is a statement of the club transfer earned pension; and
  - (b) must specify—
    - (i) the period within which the transfer is to be accepted by the scheme manager; and
    - (ii) the basis on which the club transfer earned pension will be revalued while M is in pensionable service under this scheme.

### **Acceptance of transfer value payment**

- 143.**—(1) The scheme manager may accept an application under regulation 141 from a member (M) unless—
- (a) such conditions as the scheme manager requires are not met; or
  - (b) paragraph (5) applies.
- (2) If the transfer is a non-club transfer and the scheme manager accepts the payment, M is entitled—
- (a) for the purposes of calculating benefits payable to, or in respect of, M under this scheme, to an increase in M’s pensionable earnings calculated in accordance with regulation 144; and
  - (b) to be credited with the relevant period of pensionable service in this scheme.
- (3) If the transfer is a club transfer, M is entitled—
- (a) to the amount of club transfer earned pension specified in the statement of entitlement; and

- (b) to be credited with the relevant period of pensionable service in this scheme.
- (4) The relevant period is equal to the period of employment that qualified M for the rights in respect of which the transfer is being made.
- (5) This paragraph applies to a non-club transfer if—
  - (a) it would be applied in whole or in part in respect of M's or M'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.

### Calculation of increase to pensionable earnings

**144.**—(1) The increase in pensionable earnings that the member (M) is entitled to count under regulation 143 as a result of the transfer is calculated—

- (a) in accordance with guidance and tables provided by the scheme actuary for the purpose; and
  - (b) by reference to any relevant factors as at the date the transfer payment is received by the scheme manager.
- (2) The benefits in respect of the transfer payment must be calculated by increasing M's pensionable earnings for—
- (a) the scheme year in which M joined this scheme; or
  - (b) if the transfer payment is received more than 12 months after the day on which M joined this scheme (the starting day), the scheme year in which the payment is received.
- (3) Paragraph (2)(b) does not apply if—
- (a) a written statement estimating the increase in pensionable earnings that M would be entitled to count as a result of the transfer was given to M by the scheme manager during the period of 3 months ending 12 months after the starting date; and
  - (b) the transfer payment is received by the scheme manager before the end of the period of 3 months after the date of the statement.
- (4) If the transfer is a club transfer, the club transfer earned pension M is entitled to count is calculated in accordance with the club transfer arrangements.
- (5) If the transfer value statement is accepted from a corresponding scheme, the increase in pensionable earnings M is entitled to count is the increase M would be entitled to count if—
- (a) M's employment to which that scheme applied were health service employment in respect of which M was a member of this scheme; and
  - (b) M's contributions to that scheme were contributions to this scheme.

### Transfer from 1995 or 2008 Section

**145.**—(1) This regulation applies to an active member of this scheme (M) who is entitled to require a cash equivalent of M's rights to be used to acquire rights in this scheme pursuant to—

- (a) regulation M8 of the 1995 Section(54); or
  - (b) regulation 2.F.18 or 3.F.18 of the 2008 Section(55).
- (2) M may apply to the scheme manager to convert the cash equivalent value into rights under this scheme.

(54) Regulation M8 is inserted by [S.I. 2015/96](#).

(55) Regulations 2.F.18 and 3.F.18 are inserted by [S.I. 2015/96](#).

- (3) An application under paragraph (2)—
  - (a) must be in writing in the form provided by the scheme manager for the purpose;
  - (b) must be made before the end of the period starting with the guarantee date within the meaning of whichever of regulation M8, 2.F.18 or 3.F.18 applies;
  - (c) may be made only if M has first been provided with a statement of the pensionable service and increase in pensionable earnings M will be entitled to count under this scheme if the application is accepted;
  - (d) must meet such other conditions as the scheme manager requires;
  - (e) is irrevocable.
- (4) The statement mentioned in paragraph (3)(c) must inform M of—
  - (a) the amount of the increase in pensionable earnings that will count under this scheme for the purpose of calculating benefits payable to or in respect of M;
  - (b) the pensionable service that will count under this scheme to determine whether M has 2 years qualifying service for the purposes of regulation 72.
- (5) The amount of the increase in pensionable earnings must be calculated in accordance with guidance, tables and other relevant factors provided by the scheme actuary for the purpose.
- (6) The pensionable service is equal to the period of employment that qualifies M to the entitlement mentioned in paragraph (1).
- (7) If the scheme manager accepts an application under paragraph (2), for the purposes of this scheme—
  - (a) the period of pensionable service mentioned in paragraph (4)(b) applies for the purpose mentioned in that paragraph;
  - (b) the amount of the increase in pensionable earnings is credited to M's active member's account in the scheme year in which M's application under paragraph (2) is received.
- (8) For the purposes of this regulation, in regulation 141(4), sub-paragraph (a) must be ignored.

### **Transfers from corresponding 1995 and 2008 schemes**

- 146.**—(1) This regulation applies to an active member of this scheme (M) if—
- (a) M was formerly a member of a corresponding 1995 scheme or a corresponding 2008 scheme; and
  - (b) the scheme manager considers that on the notional joining date M would be entitled to require a cash equivalent of M's rights in that scheme to be used to acquire rights in a corresponding health service scheme if M became a member of the corresponding health service scheme.
- (2) M may apply to the scheme manager to convert the cash equivalent value into rights under this scheme.
- (3) An application under paragraph (2) must be in such form, provide such information and be made at such time as the scheme manager requires.
- (4) The notional joining date in relation to a relevant corresponding scheme is the date M became a member of this scheme.
- (5) References to a corresponding 1995 scheme and a corresponding 2008 scheme must be construed in accordance with regulation 141(6).

*SECTION 4*

*Bulk transfers*

**Bulk transfers out**

- 147.**—(1) This regulation applies if—
- (a) the employment of one or more active members (the transferring employees) is transferred without consent to a new employer;
  - (b) on the transfer the transferring employees cease to be eligible to be members of this scheme;
  - (c) after the transfer the transferring employees become active members of another occupational pension scheme (the new employer’s scheme);
  - (d) the Secretary of State has agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer’s scheme, after consultation with the scheme actuary; and
  - (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) In the case of the transferring members or the transferred members, the transfer value payment to be paid—
- (a) is not calculated in accordance with regulation 136; but
  - (b) is to be such amount as the Secretary of State, after consulting the scheme actuary, determines to be appropriate in accordance with the special terms.
- (3) This Part has effect with such modifications as are necessary to give effect to those terms.
- (4) If the transfer is directly or indirectly attributable to an enactment, this Part has effect with such modifications as the Secretary of State thinks necessary in consequence of the transfer.

**Bulk transfers in**

- 148.**—(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 the transfer the transferred employees cease to be active members of an occupational pension scheme (the former employer’s scheme);
  - (c) after the transfer the transferred employees become active members of this scheme;
  - (d) the Secretary of State, after consulting the scheme actuary, has agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer’s scheme; and
  - (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.
- (2) This scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).
- (3) If the transfer is directly or indirectly attributable to an enactment, this scheme has effect with such modifications as the Secretary of State thinks necessary in consequence of the transfer.



## CHAPTER 3

### Miscellaneous transfers

#### **EU and overseas transfers**

**149.**—(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with—

- (a) the Communities Pension Scheme of the Institutions of the European Communities; or
- (b) any other scheme for the provision of retirement benefits established outside the United Kingdom.

(2) This scheme applies in relation to the member with any modifications the scheme manager considers necessary to comply with—

- (a) the terms of those arrangements;
- (b) any applicable provision contained in or made under any enactment; and
- (c) the requirements to be met by a registered pension scheme.

## PART 8

### Independent providers

#### **Interpretation**

**150.**—(1) This regulation applies for the purposes of this Part.

(2) An independent provider is a person that employs an individual under a contract of employment and—

- (a) is not otherwise an employing authority in respect of the individual;
- (b) is a party to a qualifying contract;
- (c) has been granted employing authority status for the purposes of this scheme.

(3) A qualifying contract is a contract between a relevant commissioning party and another person the primary purpose of which is the provision of clinical health care services for the NHS and which is—

- (a) an NHS standard contract;
- (b) an APMS contract; or
- (c) a contract entered into by a local authority pursuant to its functions under the 2006 Act which—
  - (i) relates to the improvement and protection of public health; and
  - (ii) the scheme manager agrees to treat as a qualifying contract for the purposes of these Regulations.

(4) The wholly or mainly condition requires an employee performing services pursuant to a qualifying contract to do so for more than 50% of the employee's time in the employment.

(5) In determining whether the wholly or mainly condition is met regard must be had to—

- (a) each scheme year; or
- (b) if the service starts or finishes during a scheme year, so much of the year in which the services are performed.

(6) The 75% threshold is 75% of the total gross amounts payable in a scheme year to an independent provider by the commissioning party in respect of a qualifying contract between them.

(7) A commissioning party is a person who commissions services under a qualifying contract.

(8) In this Part—

“closed approval” must be construed in accordance with regulation 151(4);

“IP guarantee” must be construed in accordance with regulation 154;

“NHS standard contract” means the terms and conditions from time to time drafted by the National Health Service Commissioning Board pursuant to regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012<sup>(56)</sup>;

“open approval” must be construed in accordance with regulation 151(5);

“required level of cover” means a sum equal to 110% of 3/12ths of a reasonable estimate of the independent provider’s total annual contribution liability arising under regulations 30, 33 to 35, 48 and 57 in respect of the qualifying contract in respect of which it was granted employing authority status.

#### **Application for employing authority status**

**151.**—(1) This regulation applies to a person (the applicant) who—

- (a) employs an individual under a contract of employment (the employee);
- (b) is not an employing authority in respect of the individual; and
- (c) is a party to a qualifying contract in respect of which the employee performs services.

(2) The applicant may apply to be granted the status of an employing authority in respect of the qualifying contract.

(3) An application must—

- (a) be in writing;
- (b) be in such form as the scheme manager requires;
- (c) contain a declaration that, at the date of the application, the employee satisfies the wholly or mainly condition;
- (d) contain an undertaking that a person who on or after the relevant date is engaged to perform services pursuant to the qualifying contract will do so in a way that satisfies the wholly or mainly condition;
- (e) contain a declaration that the applicant is not already an employing authority in respect of a person mentioned in sub-paragraph (c) or (d);
- (f) state whether the application is made on a closed approval or open approval basis;
- (g) provide an estimate for the scheme year in respect of which employment authority status (if granted) would take account of—
  - (i) the gross sums the applicant anticipates receiving from the commissioning party in respect of the services it is to provide under each qualifying contract to which it is a party;
  - (ii) the number of employees who will be engaged in performing such services and who will satisfy the wholly or mainly condition;
  - (iii) the total pensionable earnings of those employees;

- (iv) the total amount of members contributions payable by those employees pursuant to regulation 30 (by reference to the pensionable earnings bands into which they fall), 48 or 57;
  - (v) the total amount of employing authority contributions payable in respect of those employees pursuant to regulation 33, 34, 35, 48 or 57;
  - (vi) the total number of employees who would satisfy the wholly or mainly condition and who are engaged in performing services pursuant to each such contract but who are otherwise not eligible to be members of this scheme;
  - (vii) the total estimated earnings of the employees referred to in paragraph (vi).
- (4) A closed approval basis relates to an employee—
- (a) who is not otherwise covered by—
    - (i) a direction under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(57)</sup>; or
    - (ii) a determination under section 25(5) of the 2013 Act; and
  - (b) who was, within the 12 months preceding the start of the employment contract with the applicant, in an employment in which the employee was entitled to participate in—
    - (i) superannuation benefits provided under section 10 of the Superannuation Act 1972<sup>(58)</sup> whether or not the employee had been a member of such a scheme pursuant to that entitlement; or
    - (ii) benefits provided under sections 1(2)(e) and 3 of the 2013 Act whether or not the employee had been a member of such a scheme pursuant to that entitlement.
- (5) An open approval basis relates to an employee performing services pursuant to a qualifying contract—
- (a) who satisfies the wholly or mainly condition;
  - (b) regardless of whether the employee is within paragraph (4).

### **Grant of employing authority status**

- 152.**—(1) The scheme manager may grant employment authority status on an application under regulation 151 if—
- (a) satisfied as to the matters in paragraph (3) of that regulation; and
  - (b) where an IP guarantee is required, the guarantee has been provided to the scheme manager.
- (2) Employing authority status takes effect—
- (a) on the date it is granted; or
  - (b) if later, on such date as the applicant specifies in the application.

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(57) Section 7 has been amended by sections 10(5) and 29(1) and (4) of, and paragraphs 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), section 57 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c.32), section 109 of, and paragraph 24 of Schedule 16 to, the National Health Service (Scotland) Act 1978 (c.29) and section 2 of, and paragraphs 28 and 29 of Schedule 1 to, the National Health Service (Consequential Provisions) Act 2006 (c.43).

(58) 1972 c.11. Section 10 has been amended by sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 190 of, and paragraph 7 of Schedule 8 to, the Pension Schemes Act 1993 (c.48), section 27 of, and paragraphs 6 and 10 of Schedule 8 to, the Public Service Pensions Act 2013 (c.25) and article 108 of S.I. 2001/3649.

**Extension of employing authority status**

**153.**—(1) Paragraph (2) applies if an independent provider is or subsequently becomes a party to a qualifying contract which is not the qualifying contract in respect of which employing authority status was granted (a further contract).

(2) The independent provider's employing authority status extends to the further contract with effect from—

- (a) if the independent provider was a party to the further contract at the date employing authority status was granted, that date;
- (b) in any other case, the date on which the further contract is entered into.

(3) Paragraph (4) applies if an independent provider is associated with another employer (the associated employer) who is a party to a qualifying contract.

(4) The independent provider's status as an employing authority extends to a qualifying contract to which the associated employer is a party.

(5) The extension of employing authority status by virtue of paragraph (4) takes effect—

- (a) if the associated employer is a party to the qualifying contract mentioned in paragraph (4) at the date the independent provider is granted employing authority status, on that date;
- (b) in any other case, on the date the associated employer enters into the qualifying contract.

(6) For the purposes of paragraph (3) an independent provider is associated with another employer if the independent provider—

- (a) exercises direct control over the other employer's affairs; or
- (b) is entitled to acquire direct or indirect control over those affairs.

(7) Paragraph (8) applies if, in consequence of paragraph (2) or (4) the independent provider's estimated contribution liability under regulations 30, 33 to 35, 48 and 57 increases by 10% or more on the date specified in paragraph (2) or (5), as the case may be.

(8) The scheme manager may require the independent provider to take any of the following steps—

- (a) increase the sum already guaranteed by an IP guarantee;
- (b) provide such further IP guarantees in respect of the amount of the increase in the estimated contribution liability as the scheme manager thinks appropriate;
- (c) if the independent provider has not already provided an IP guarantee, provide an IP guarantee for the total amount of estimated contribution liability in relation to all qualifying contracts in respect of which the independent provider has employing authority status.

**IP guarantees**

**154.**—(1) An IP guarantee is a guarantee by an independent provider which—

- (a) is in such form as the scheme manager approves;
- (b) guarantees payment to the scheme manager of the required level of cover;
- (c) is underwritten by one or more bodies approved of by the scheme manager;
- (d) takes effect on the date the independent provider is granted employing authority status for the purposes of this Part.

(2) The scheme manager may, as a condition of granting employing authority status to an independent provider, require the independent provider to provide an IP guarantee.

- (3) The scheme manager may at any other time require an independent provider to provide an IP guarantee and may do so in particular—
  - (a) if an independent provider fails to meet any of its liabilities under these Regulations as an employing authority;
  - (b) if, before it was granted employing authority status under this Part, failed in any other capacity to meet such liabilities;
  - (c) if the scheme manager has reasonable grounds to believe that the independent provider is unable, or is likely to become unable, to meet such liabilities.
- (4) The scheme manager may in exceptional cases specify additional requirements for an IP guarantee.
- (5) An independent provider must review each IP guarantee currently having effect—
  - (a) not later than one month before the start of a scheme year;
  - (b) not later than one month after the date on which employing authority status was granted;
  - (c) not later than one month before the date on which the guarantee is expressed to cease to have effect (if that is not the start of a scheme year);
  - (d) if it becomes a party to another qualifying contract;
  - (e) immediately it reasonably believes that its estimated contribution liability under regulation 30, 33, 34, 35, 48 or 57 has increased or may increase by more than 10%;
  - (f) on being notified in writing by the scheme manager that the scheme manager considers that the sum guaranteed by the guarantee does not equal or exceed the required level of cover.
- (6) Paragraph (7) applies if—
  - (a) paragraph (5)(e) applies; and
  - (b) the independent provider determines that the amount of cover provided by the IP guarantee or IP guarantees currently having effect is less than the total required level of cover in respect of all of its qualifying contracts.
- (7) The independent provider must before the end of the period of 14 days starting with the determination—
  - (a) increase the amount of cover its IP guarantee or guarantees so as to at least equal the total required level of cover; or
  - (b) take out an additional IP guarantee or guarantees for such amount or amounts as will secure that the total required level of cover is effected.
- (8) The independent provider must before the end of the period mentioned in paragraph (7) notify the scheme manager of the action taken under that paragraph.
- (9) Paragraph (10) applies if—
  - (a) paragraph (5)(f) applies; and
  - (b) the independent provider determines that the amount of cover provided by the IP guarantee or IP guarantees currently having effect is not less than the total required level of cover in respect of all of its qualifying contracts.
- (10) The independent provider must—
  - (a) before the end of the period of 14 days after the determination notify the scheme manager of the determination; and
  - (b) provide the scheme manager with such information as the scheme manager may from time to time require in relation to the extent to which its IP guarantee or guarantees are sufficient to meet the required level of cover.

**75% threshold and contribution surcharge**

**155.**—(1) An independent provider must not in any scheme year exceed the 75% threshold for the aggregate amount of pensionable earnings paid to members of this scheme in respect of the performance of services under all qualifying contracts in relation to which the independent provider is an employing authority.

(2) If an independent provider fails to comply with paragraph (1), the independent provider must pay to the scheme manager a surcharge (the employer contribution surcharge) of 12% of—

- (a) the amount by which the 75% threshold is exceeded; or
- (b) if paragraph (3) applies such part of the excess as the scheme manager considers reasonable having regard to the declared NHS income, profits, losses and expenses for the scheme year in question.

(3) This paragraph applies if the scheme manager is satisfied that there is a reasonable explanation for the threshold having been exceeded.

(4) Where paragraph (3) applies, the scheme manager may, at any time—

- (a) reduce the amount of the excess in respect of which the employer contribution surcharge is to be paid; or
- (b) determine that no surcharge is to be paid.

(5) An employer contribution surcharge must be paid to the scheme manager before the end of the period of one month (or in exceptional circumstances such other period as the scheme manager decides) starting with the date on which the scheme manager gives notice to an independent provider that the surcharge is payable.

(6) If an independent provider fails to pay an employer contribution surcharge on or before the time required by paragraph (5)—

- (a) there is a chargeable event for the purposes of regulation 36;
- (b) paragraphs (2) to (8) of that regulation apply as if the surcharge were contributions payable by an employing authority.

(7) The failure of an independent provider to comply with paragraph (1) does not affect—

- (a) the amount of pensionable earnings a person who is member of this scheme by virtue of regulation 18(1)(c) is entitled to count for the purposes of these Regulations; or
- (b) entitlement to or the amount of benefits payable under this scheme.

**Default notice**

**156.**—(1) This regulation applies if the scheme manager gives an independent provider a notice under regulation 36(4) (non-payment of contributions) in respect of contributions payable in connection with a qualifying contract.

(2) The scheme manager must—

- (a) also give a copy of the notice to the commissioning party to the qualifying contract;
- (b) at the same time as the notice under regulation 36(4), give the independent provider notice that continued non-payment of the contributions will result in termination of employing authority status with effect from the day following the end of the second month after the month for which the contributions are due.

(3) If, one month after the issue of a notice under paragraph (1), some or all of the contributions referred to in that paragraph remain unpaid, the scheme manager must—

- (a) notify the commissioning party of the non-payment specifying—
  - (i) the period or periods for which contributions are outstanding; and

- (ii) the amount or amounts outstanding; and
- (b) request the commissioning party—
  - (i) to consider withholding from any payments it is due to make to the independent provider in relation to any qualifying contract, an amount equal to the amount of unpaid contributions; and
  - (ii) to pay that amount to the scheme manager.
- (4) If the scheme manager receives an amount pursuant to paragraph (3)(b)(ii), the scheme manager must—
  - (a) give the commissioning party a written receipt for the payment;
  - (b) notify the independent provider in writing that a sum equal to the amount of the unpaid contributions has been—
    - (i) withheld pursuant to paragraph (3)(b)(i); and
    - (ii) paid to the scheme manager by the commissioning party pursuant to paragraph (3)(b)(ii).

### **Pension returns**

- 157.**—(1) An independent provider must provide the scheme manager with the information specified in paragraph (4) in respect of the relevant period.
- (2) The information must be provided—
    - (a) in writing and in such form as the scheme manager from time to time requires;
    - (b) not more than two months after the end of a scheme year; and
    - (c) not more than two months after the date when the independent provider ceases to be an employing authority for the purposes of this scheme if that does not occur at the end of a scheme year.
  - (3) The relevant period is—
    - (a) for the purposes of paragraph (2)(b), the complete scheme year in respect of which the information is provided;
    - (b) for the purposes of paragraph (2)(c), the period beginning with the start of the scheme year in which the cessation occurs and ending with the date of the cessation.
  - (4) The information is—
    - (a) a complete list of all qualifying contracts to which the independent provider is a party at any time during the relevant period;
    - (b) the total gross amounts—
      - (i) estimated in accordance with regulation 151(3) to be payable during the relevant period under those contracts to the independent provider by the commissioning party;
      - (ii) actually received by the independent provider from the commissioning party during the relevant period;
    - (c) whether the independent provider’s status as an employing authority was granted on an open or closed approval basis;
    - (d) whether the approval status has changed and, if so, when;
    - (e) where the scheme manager has required an IP guarantee, the amount guaranteed;
    - (f) the number of employees who were engaged in performing services pursuant to a qualifying contract who satisfy the wholly or mainly condition;

- (g) the total pensionable earnings of those employees;
  - (h) the total employee contributions payable by those employees pursuant to regulations 30 (by reference to the pensionable earnings bands into which they fall), 48 and 57;
  - (i) the total amount of employing authority contributions payable in respect of those employees pursuant to regulation 33, 34, 35, 48 or 57;
  - (j) confirmation that those of its employees who were or became members of this scheme during the relevant period satisfied the wholly or mainly condition throughout the period;
  - (k) the total number of employees who—
    - (i) satisfied the wholly or mainly condition and were engaged in performing services pursuant to a qualifying contract; but
    - (ii) were otherwise not eligible to be members of this scheme.
  - (l) the total amount of pensionable earnings of employees who satisfied the wholly or mainly condition expressed as a percentage of the total gross amounts payable to the independent provider by a commissioning party in respect of all of its qualifying contracts;
  - (m) where the percentage referred to in sub-paragraph (l) exceeds 75%, an explanation for that percentage having been exceeded;
  - (n) whether the independent provider has ceased to be a party to a qualifying contract;
  - (o) whether the independent provider no longer has any employees who satisfy the wholly or mainly condition.
- (5) Paragraph (6) applies if an employee of an independent provider—
- (a) is a member of this scheme by virtue of regulation 18(1)(c); and
  - (b) ceases to satisfy the wholly or mainly condition or any other condition of membership of this scheme.
- (6) The independent provider must—
- (a) inform the employee that the employee's membership of this scheme is terminated on the date the employee ceased to satisfy the condition;
  - (b) notify that fact to the scheme manager by notice in writing.

### **Provision of information**

**158.**—(1) This regulation applies for the purposes of enabling the scheme manager to assess whether the grant of employing authority status to an independent provider should continue to have effect.

(2) The scheme manager may at any time require the independent provider to provide information which the scheme manager thinks relevant relating to—

- (a) those employed by the independent provider who have become members of this scheme by virtue of regulation 18(1)(c);
- (b) the qualifying contracts in respect of which employing authority status was granted or extended;
- (c) the numbers of persons engaged in performing services pursuant to the contracts and the proportion of their time spent doing so.

(3) The information must be provided not later than 14 days after the date it is requested.

(4) The scheme manager may by notice in writing require the independent provider to provide such other information as the scheme manager thinks necessary to determine whether there has been compliance with these Regulations.



(5) Information required under paragraph (4) must be provided within the time specified in the notice.

### **Termination of employing authority status**

**159.**—(1) The scheme manager must terminate an independent provider’s status as an employing authority in respect of a qualifying contract if the independent provider ceases to be a party to the contract.

(2) The scheme manager may terminate an independent provider’s status as an employing authority in respect of a qualifying contract in any of the following circumstances—

- (a) if the independent provider subsequently acquires the status of an employing authority by virtue of being listed in Schedule 5 (ignoring paragraph 5 of that Schedule);
- (b) if all of the employees of the independent provider who acquired membership of the scheme by virtue of regulation 18(1)(c) cease to satisfy the wholly or mainly condition;
- (c) if the independent provider—
  - (i) fails to review, in accordance with regulation 154(5), the amount of cover guaranteed by its IP guarantee; or
  - (ii) having carried out the review fails to increase the amount of cover provided by the IP guarantee where such an increase is required;
- (d) if, following the issue of a notice under regulation 156, the independent provider fails to pay to the scheme manager the amount specified in paragraph (1) of that regulation in the time so specified;
- (e) if paragraph (7) of regulation 154 applies and the independent provider fails to act as required by that paragraph;
- (f) if the independent provider fails to provide information required by regulation 158(2) or (4);
- (g) if the scheme manager is not satisfied that the information provided by the independent provider pursuant to regulation 158(2) supports the continuation of its status as an employing authority;
- (h) if the independent provider fails to notify the scheme manager that a guarantor of any of its IP guarantees has withdrawn or revoked its guarantee;
- (i) if the independent provider has in any three years in a five year period exceeded the 75% threshold or has a pattern of doing so.

(3) If the scheme manager decides that the independent provider’s status as an employing authority in respect of a qualifying contract is to be terminated, the scheme manager must, as soon as reasonable practicable, give the independent provider notice of—

- (a) the termination; and
- (b) the date on which it takes effect.

(4) If an independent provider’s status as an employing authority is terminated, its employees who are or were eligible to be members of this scheme cease to be members or be eligible to be members on the date of termination.

### **Withdrawal from employing authority status in this scheme**

**160.**—(1) An independent provider may withdraw from employing authority status in this scheme in accordance with this regulation.

(2) The independent provider must give notice to the scheme manager (a withdrawal notice) that it intends to cease to be an independent provider for the purposes of these Regulations with effect from the date specified in the notice (the withdrawal date).

(3) A withdrawal notice that affects a person who has become a member of this scheme by virtue of regulation 18(1)(c) must not be given unless the person gives consent in writing to the independent provider.

(4) The withdrawal date must not be earlier than the end of the period of six months starting with the date of the withdrawal notice (the withdrawal period).

(5) A withdrawal notice must—

- (a) be in writing; and
- (b) be accompanied by evidence of the consent required under paragraph (3).

(6) A withdrawal notice has effect in respect of every qualifying contract to which the independent provider is a party.

(7) With effect from the withdrawal date, a person who is a member of this scheme by virtue of regulation 18(1)(c) ceases to be such a member.

#### **Change from open approval to closed approval basis**

**161.**—(1) If the employing authority status of an independent provider was granted on an open approval basis, the independent provider may give the scheme manager a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on a closed approval basis.

(2) A modification notice given in respect of one or more qualifying contracts is effective in respect of all qualifying contracts.

(3) A modification notice must—

- (a) be in writing;
- (b) specify a date on which the modification is to take effect (“the operative modification date”): that date cannot fall within the period of 6 months commencing with the date of the modification notice (“the modification period”);
- (c) be accompanied by the written consent of any affected person who has consented to the giving of that notice: for these purposes an “affected person” is any person who became a member of this scheme by virtue of regulation 18(1)(c).

(4) On the operative modification date—

- (a) the basis of the independent provider’s approval changes from an open to a closed approval basis;
- (b) any affected person who gave consent to the giving of the modification notice ceases to be a member of this scheme;
- (c) any affected person who did not give such consent remains a member of this scheme.

(5) A person who is, but for a modification notice, otherwise entitled to participate in this scheme during the modification period by virtue of the independent provider having been granted approval on an open approval basis, continues to be so entitled but only for the duration of that period.

(6) Nothing in paragraph (5) prevents a person referred to in that paragraph from becoming a member of this scheme by virtue of their employment with some other employing authority.

(7) During the modification period, a person who was eligible to become a member of this scheme in accordance with regulation 18(1)(c) but who did not do so by virtue of opting out in accordance with paragraph 1 of Schedule 4, may, in accordance with paragraph 2 of that Schedule, join or re-join this scheme.

### **Change from closed approval basis to open approval basis**

**162.**—(1) An independent provider granted employing authority status on a closed approval basis when it first applied for approval may give the scheme manager a modification notice stating that it wishes its status as an employing authority to cease to be on that basis but to continue instead on an open approval basis.

(2) An independent provider that has previously modified its participation in this scheme may give the scheme a further modification notice stating that it wishes its status as an employing authority to cease to be on a closed approval basis but to continue instead on an open approval basis.

(3) An application referred to in paragraphs (1) and (2) must specify—

- (a) the date (“the modification date”) from which the change to open approval is sought: the modification date must not be less than 3 months from the date the application is received by the scheme manager;
- (b) that approval on an open approval basis is sought in respect of all employees of the independent provider engaged to perform services pursuant to a qualifying contract at the modification date provided always that such persons satisfy the wholly or mainly condition and regardless of whether they were so engaged at the date of any earlier approval.

(4) Where the scheme manager is satisfied that the independent provider will, at the modification date, satisfy the matters set out in regulation 151, the change to open approval basis is to take effect from that date.

## **PART 9**

### **General**

#### **Definitions**

**163.** The expressions listed in column 1 of the Table in Schedule 15 have the meaning given by the corresponding entry in column 2.

#### **OOH provider**

**164.**—(1) A reference to an OOH provider is a reference to a body within paragraph (2) or (3).

(2) A body is within this paragraph if it is a company limited by guarantee (which is not otherwise an employing authority)—

- (a) in which all the members of the company are medical practitioners, APMS contractors, GMS practices or PMS practices, and the majority of those members are—
  - (i) APMS contractors, GMS practices or PMS practices whose APMS contracts, GMS contracts or PMS agreements require them to provide OOH services; or
  - (ii) medical practitioners who are partners or shareholders in an APMS contractor, a GMS practice or a PMS practice which is a partnership or a company limited by shares and which is required to provide OOH services under its GMS contract, PMS agreement or APMS contract;
- (b) which has a contract with a Clinical Commissioning Group, the National Health Service Commissioning Board, a Local Health Board, an APMS contractor, a GMS practice or a PMS practice for the provision of OOH services; and
- (c) in respect of which a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board appointed by the Secretary of State or the National Assembly of Wales to act on his or its behalf—

- (i) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;
  - (ii) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and
  - (iii) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority.
- (3) A body is within this paragraph if it is a body corporate, other than a company limited by guarantee (which is not otherwise an employing authority) which—
- (a) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;
  - (b) operates on a not-for-profit basis;
  - (c) is not an associated company in relation to another person;
  - (d) has memorandum or articles or rules that—
    - (i) prohibit the payment of dividends to its members; and
    - (ii) require its profits (if any) or other income to be applied to promoting its objects, and
    - (iii) 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;
  - (e) has at least one member who is—
    - (i) an APMS contractor, a GMS practice or a PMS practice; or
    - (ii) a partner in a partnership that is an APMS contractor, a GMS practice or a PMS practice; or
    - (iii) a shareholder in a company limited by shares that is an APMS contractor, a GMS practice or a PMS practice;
  - (f) has a contract with a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board, an APMS contractor, a GMS practice or a PMS practice, for the provision of OOH services, and
  - (g) is approved as an employing authority by a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board appointed by the Secretary of State to act on the Secretary of State's behalf—
    - (i) pursuant to a written application made by the body to it for that purpose; and
    - (ii) that Group or Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.
- (4) For the purposes of paragraph (3)(c)—
- (a) a body corporate is another person's associated company if the person—
    - (i) has control of it; and
    - (ii) is not an employing authority;
  - (b) a person is taken to have control of a body corporate if the person—
    - (i) exercises, or is able to exercise direct or indirect control over its affairs; or
    - (ii) is entitled to acquire such control.
- (5) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority must make a written

application to a Clinical Commissioning Group, the National Health Service Commissioning Board or Local Health Board appointed by the Secretary of State to act on the Secretary of State's behalf ("the appointed Group or Board").

(6) An application referred to in paragraph (5) may specify the date from which approval by the appointed Group or Board (if given) is to have effect ("the nominated date").

(7) If a company limited by guarantee or other body corporate makes an application and—

(a) the appointed Group or Board is satisfied that the company or other body corporate is within paragraph (2) or (3), as the case may be or will be at a nominated date which is later than the approval date; and

(b) it approves that application, the approval takes effect on the later of the nominated date and the approval date.

(8) If paragraph (7) applies, NHS employment is treated as commencing on the later of the nominated date (if any) and the approval date.

(9) The appointed Group or Board may give an OOH provider a notice in writing terminating its participation in this scheme if the provider—

(a) does not have in force a guarantee, indemnity or bond as required by the scheme manager in accordance with regulation 165;

(b) has ceased to be within paragraph (2) or (3);

(c) has notified the Group or Board that any one of the following events has occurred in respect of it—

(i) a proposal for a voluntary arrangement has been made or approved under Part I of the Insolvency Act 1986<sup>(59)</sup> ("the 1986 Act");

(ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 to the 1986 Act<sup>(60)</sup>;

(iii) a receiver, manager, or administrative receiver has been appointed under Part III of the 1986 Act;

(iv) a winding-up petition has been presented, a winding-up order has been made or a resolution for voluntary winding-up has been passed under Part IV or Part V of the 1986 Act or pursuant to section 123 of the Co-operative and Community Benefit Societies Act 2014<sup>(61)</sup> or an instrument of dissolution has been drawn up in accordance with section 119 of the Co-operative and Community Benefit Societies Act 2014;

(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 31 of the Companies Act 2006<sup>(62)</sup>.

(10) An OOH provider—

(a) must give the appointed Group or Board notice in writing upon the occurrence of any of the events referred to in paragraph (9)(c) and must give the notice on the same day as the event;

(b) that wishes to cease to participate in this scheme must give both the appointed Group or Board and its employees not less than 3 months' notice in writing (to commence with the date of the notice) of that fact.

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<sup>(59)</sup> 1986 c.46.

<sup>(60)</sup> Schedule B1 was inserted by section 248(2) of, and Schedule 16 to, the Enterprise Act 2002 (c.40).

<sup>(61)</sup> 2014 c.14.

<sup>(62)</sup> 2006 c.46.

- (11) An OOH provider must cease to participate in this scheme on—
- (a) the date specified by the appointed Group or Board in a notice under paragraph (9);
  - (b) the day upon which the period referred to in paragraph (10)(b) expires if a notice under that provision has been given.

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

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

- (a) an employing authority fails or has at any time in the past failed, to pay or to remit contributions in accordance with regulation 30 to 35, 48, 57 or 62; and
- (b) the authority is—
  - (i) a GMS practice;
  - (ii) a PMS practice;
  - (iii) an APMS contractor; or
  - (iv) an OOH provider.

(2) The scheme manager may require the authority to have in force a guarantee, indemnity or bond which provides for payment to the scheme manager, if the authority fails to meet them, of all future liabilities under—

- (a) this scheme; or
- (b) the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000(**63**).

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

### **Medical practitioner**

**166.**—(1) References to a medical practitioner must be construed in accordance with this regulation.

(2) A medical practitioner is a fully registered person—

- (a) whose name is included in a medical performers list; and
- (b) to whom any of paragraphs (3) to (7) apply.

(3) This paragraph applies to—

- (a) a GMS practice,
- (b) a PMS practice,
- (c) an APMS contractor, or
- (d) an OOH provider.

(4) This paragraph applies to a partner in a partnership that is—

- (a) a GMS practice,
- (b) a PMS practice, or
- (c) an APMS contractor.

(5) This paragraph applies to a shareholder in a company limited by shares that is—

- (a) a GMS practice,

(63) S.I. 2000/619 as amended by S.I. 2001/1428 and 3649, 2002/610, 2005/3074, 2006/600, 2007/3280, 2008/655, 2009/2446, 2010/492, 2011/2586, 2013/413, 2014/78 and 2015/96.

- (b) a PMS practice, or
  - (c) an APMS contractor.
- (6) This paragraph applies to an ophthalmic provider.
- (7) This paragraph applies to a person—
- (a) who is employed by a GMS practice, a PMS practice, an APMS contractor, an OOH provider or a Local Health Board wholly or mainly to assist the employer in the discharge of the employer’s duties as a GMS practice, a PMS practice, an APMS contractor, an OOH provider or a Local Health Board (as the case may be), or
  - (b) who participates in a doctors’ retainer scheme,
- if the person performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services, certification services, Board and advisory work, health-related functions exercised under section 75 of the 2006 Act, NHS 111 services, pharmaceutical services, general ophthalmic services, primary dental services, services under an NHS standard contract or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and services, practice based services education or training, or organising the education or training of medical students or practitioners (or a combination of those services) as or on behalf of that practice, contractor or provider.
- (8) A person who is a GP registrar is not a medical practitioner.
- (9) A reference to a fully registered person must be construed in accordance with section 55 of the Medical Act 1983(64).
- (10) An ophthalmic provider is a fully registered person who—
- (a) as regards England—
    - (i) is included in an ophthalmic performers list prepared and published by the National Health Service Commissioning Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (England) Regulations 2013(65); and
    - (ii) holds a GOS contract;
  - (b) as regards Wales, is included in an ophthalmic list kept and published by a Local Health Board pursuant to regulation 6(1) of the National Health Service (General Ophthalmic Services) Regulations 1986(66).

Signed by authority of the Secretary of State for Health.

4th February 2015

*Daniel Poulter*  
Parliamentary Under-Secretary of State,  
Department of Health

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(64) 1983 c.54. The definition of “fully registered person” has been amended by S.I. 2000/3041, 2006/1914, 2007/3101 and 2008/1774.

(65) S.I. 2013/335.

(66) S.I. 1986/975 as amended by S.I. 1996/705, 2002/1883 and 2006/181.

We consent

5th February 2015

*David Evennett*  
*Harriett Baldwin*  
Two of the Lords Commissioners of Her  
Majesty's Treasury



## SCHEDULES

### SCHEDULE 1

Regulation 4

#### Pension Board

#### **Composition of the pension board**

1.—(1) The composition of the Pension Board (the Board) is to be determined from time to time by the scheme manager—

- (a) having regard to the nature of the matters on which the Board may be required to assist;
- (b) having regard to the desirability of securing the effective and efficient governance and administration of—
  - (i) this scheme, and
  - (ii) any statutory pension scheme that is connected with it; and
- (c) must include employer representatives and member representatives (see section 5(6) of the 2013 Act) in equal numbers.

(2) The members of the Board are to be appointed by the scheme manager.

(3) The scheme manager cannot appoint a person to be a member of the Board unless satisfied that the person does not have a conflict of interest.

#### **Terms of office of members**

2.—(1) The duration of the term of office of each member of the Board is to be determined by the scheme manager on appointment.

(2) No person may hold office as a member of the Board for more than an aggregate of nine years during any continuous period of twelve years.

#### **Disqualification from appointment as a member**

3.—(1) A person is disqualified from appointment as a member of the Board in any of the circumstances set out in sub-paragraph (2).

(2) Those circumstances are if that person—

- (a) has a conflict of interest;
- (b) has at any time been convicted of an offence involving dishonesty or deception in the United Kingdom and the conviction is not a spent conviction;
- (c) has at any time been convicted of an offence in the United Kingdom, and—
  - (i) the final outcome of the proceedings was a sentence of imprisonment or detention; and
  - (ii) the conviction is not a spent conviction;

(d) has at any time been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—

*Status: This is the original version (as it was originally made).*

- (i) for which the person was responsible or to which the person was privy; or
  - (ii) which the person by the person's conduct contributed to or facilitated,
- from being concerned with the management or control of any body;
- (e) has at any time been removed under—
- (i) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(67)</sup> (powers of Court of Session to deal with management of charities); or
  - (ii) section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session),
- from being concerned with the management or control of any body;
- (f) has at any time been removed from office as the chair, member, convenor or director of any public body on the grounds, in terms, that it was not in the interests of, or conducive to the good management of, that body that the person should continue to hold that office;
- (g) at any time has been adjudged bankrupt or sequestration of the person's estate has been awarded, and—
- (i) the person has not been discharged; or
  - (ii) the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(68)</sup> (bankruptcy restrictions order and undertaking);
- (h) has at any time made a composition or arrangement with, or granted a trust deed for, the person's creditors and the person has not been discharged in respect of it;
- (i) is subject to—
- (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986<sup>(69)</sup>;
  - (ii) a disqualification order under Part H of the Companies (Northern Ireland) Order 1986<sup>(70)</sup>;
  - (iii) a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(71)</sup>; or
  - (iv) an order made under section 429(2) of the Insolvency Act 1986<sup>(72)</sup> (disabilities on revocation of a county court administration order);
- (j) has at any time been convicted of an offence elsewhere than in the United Kingdom and the scheme manager is satisfied that the person's presence on the pension board would be liable to undermine public confidence in the governance, management or administration of—
- (i) this scheme; or
  - (ii) any statutory pension scheme that is connected with it.

#### **Appointment, term of office and cessation of office of the chair**

**4.—(1)** The scheme manager is to appoint the chair of the Board.

<sup>(67)</sup> 1990 c.40. Section 7 was repealed by section 104 of, and paragraph 7(b) of Schedule 4 to, the Charities and Trustee Investment (Scotland) Act 2005 ([asp 10](#)).

<sup>(68)</sup> 1986 c.45. Schedule 4A was inserted by section 257(2) of, and Schedule 20 to, the Enterprise Act 2002 (c.40).

<sup>(69)</sup> 1986 c.46.

<sup>(70)</sup> S.I. 1986/1032 (N.I. 6).

<sup>(71)</sup> S.I. 2002/3150 (N.I. 4).

<sup>(72)</sup> Section 429(2) has been amended by section 269 of, and paragraphs 1 and 15 of Schedule 23 to, the Enterprise Act 2002.

(2) If the person appointed is not already a member of the Board, by virtue of the appointment, the person becomes a member of the Board.

(3) The term of office of a member of the Board as chair is to be determined by the scheme manager on appointment of the member as chair, but it must be for a period that is no longer than the period between the chair's date of appointment as chair and the date on which the chair's term of office as a member is due to expire (irrespective of whether or not they are thereafter reappointed as a member).

(4) A member serving as chair ceases to be chair—

- (a) on ceasing to be a member;
- (b) if the member resigns as chair, which the member may do at any time by giving a minimum of six months' notice (or such shorter period as the scheme manager is prepared to accept) in writing to the scheme manager;
- (c) if the member's membership of the Board is suspended by the scheme manager.

### **Voting and quorum**

5.—(1) Only the following members of the Board are entitled to vote at meetings of the Board—

- (a) members who are representatives of employers;
- (b) members who are representatives of scheme members;
- (c) the chair in the event of an equality of votes by those mentioned in sub-paragraphs (a) and (b).

(2) The quorum of the Board—

- (a) is the lowest whole number of members which is equal to or exceeds two thirds of the total number of members of the Board entitled to vote;
- (b) must include the chair.

### **Conflicts of interest**

6.—(1) The scheme manager must, from time to time, be satisfied that none of the members of the Board has a conflict of interest.

(2) For the purpose of enabling the scheme manager to be satisfied that a person referred to in sub-paragraph (3) does not have a conflict of interest, that person must provide the scheme manager with such information as the scheme manager reasonably requires.

(3) Those persons are—

- (a) a member of the Board;
- (b) a person proposed to be appointed by the scheme manager as a member of the Board.

### **Information**

7.—(1) The information about the Board required to be published by section 6 (Pension Board: information) of the 2013 Act must additionally include a statement in relation to each member of the Board setting out any financial or other interest not being a conflict of interest but which has the potential to constitute a conflict of interest in the future.

(2) The obligation to include a statement mentioned in sub-paragraph (1) may be satisfied in whole or in part by the publication of any information provided to the scheme manager for the purposes of paragraph 6(2).

## SCHEDULE 2

Regulation 5

## Scheme Advisory Board

**Composition of the Scheme Advisory Board**

1.—(1) The composition of the Scheme Advisory Board (the Board) is to be determined from time to time by the Secretary of State having regard to the nature of the advice which the Board may be required to provide.

(2) The members of the Board are to be appointed by the Secretary of State.

(3) The Secretary of State cannot appoint a person to be a member of the Board unless satisfied that the person does not have a conflict of interest.

**Disqualification from appointment as a member**

2.—(1) A person is disqualified from appointment as a member of the Board in any of the circumstances set out in sub-paragraph (2).

(2) Those circumstances are if that person—

- (a) has a conflict of interest;
- (b) has at any time been convicted of an offence involving dishonesty or deception in the United Kingdom and the conviction is not a spent conviction;
- (c) has at any time been convicted of an offence in the United Kingdom, and—
  - (i) the final outcome of the proceedings was a sentence of imprisonment or detention; and
  - (ii) the conviction is not a spent conviction;
- (d) has at any time been removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners, the Charity Commission or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity—
  - (i) for which the person was responsible or to which the person was privy; or
  - (ii) which the person by the person's conduct contributed to or facilitated, from being concerned with the management or control of any body;
- (e) has at any time been removed under—
  - (i) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(73)</sup> (powers of Court of Session to deal with management of charities); or
  - (ii) section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session), from being concerned with the management or control of any body;
- (f) has at any time been removed from office as the chair, member, convenor or director of any public body on the grounds, in terms, that it was not in the interests of, or conducive to the good management of, that body that the person should continue to hold that office;
- (g) at any time has been adjudged bankrupt or sequestration of the person's estate has been awarded, and—
  - (i) the person has not been discharged; or

<sup>(73)</sup> 1990 c.40. Section 7 was repealed by section 104 of, and paragraph 7(b) of Schedule 4 to, the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

- (ii) the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986<sup>(74)</sup> (bankruptcy restrictions order and undertaking);
- (h) has at any time made a composition or arrangement with, or granted a trust deed for, the person's creditors and the person has not been discharged in respect of it;
- (i) is subject to—
  - (i) a disqualification order or disqualification undertaking under the Company Directors Disqualification Act 1986<sup>(75)</sup>;
  - (ii) a disqualification order under Part II of the Companies (Northern Ireland) Order 1986<sup>(76)</sup>;
  - (iii) a disqualification undertaking under the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(77)</sup>; or
  - (iv) an order made under section 429(2) of the Insolvency Act 1986<sup>(78)</sup> (disabilities on revocation of a county court administration order);
- (j) has at any time been convicted of an offence elsewhere than in the United Kingdom and the Secretary of State is satisfied that the person's presence on the scheme advisory board would be liable to undermine public confidence in the regulation, management or administration of—
  - (i) this scheme; or
  - (ii) any statutory pension scheme that is connected with it.

### **Appointment, term of office and cessation of office of the chair**

- 3.**—(1) The Secretary of State must appoint two persons as joint chair of the Board.
- (2) One of those persons must be a representative of employers and the other must be a representative of scheme members.
- (3) The Secretary of State may appoint a person—
- (a) who is not already a member on the Board; or
  - (b) who is already a member on the Board.
- (4) A member serving as chair shall cease to be chair—
- (a) on ceasing to be a member;
  - (b) if the member resigns as chair, which the member may do at any time by giving a minimum of six months' notice (or such shorter period as the Secretary of State is prepared to accept) in writing to the Secretary of State;
  - (c) if the member's membership of the Board is suspended by the Secretary of State.

### **Quorum of the Board**

- 4.** The quorum of the Board is six and must be comprised as follows—
- (a) not less than three members who are representatives of employers; and
  - (b) not less than three members who are representatives of scheme members.

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<sup>(74)</sup> 1986 c.45. Schedule 4A was inserted by section 257(2) of, and Schedule 20 to, the Enterprise Act 2002 (c.40).

<sup>(75)</sup> 1986 c.46.

<sup>(76)</sup> S.I. 1986/1032 (N.I. 6).

<sup>(77)</sup> S.I. 2002/3150 (N.I. 4).

<sup>(78)</sup> Section 429(2) has been amended by section 269 of, and paragraphs 1 and 15 of Schedule 23 to, the Enterprise Act 2002.

**Conflicts of interest**

5.—(1) The Secretary of State must, from time to time, be satisfied that none of the members of the Board has a conflict of interest.

(2) For the purpose of enabling the Secretary of State to be satisfied that a person referred to in sub-paragraph (3) does not have a conflict of interest, that person must provide the Secretary of State with such information as the Secretary of State reasonably requires.

(3) Those persons are—

- (a) a member of the Board;
- (b) a person proposed to be appointed by the Secretary of State as a member of the Board.

## SCHEDULE 3

Regulation 14

## Administrative matters

## PART 1

## Accounts and information

**Scheme accounts and actuarial valuations**

1.—(1) This paragraph applies to—

- (a) this scheme; and
- (b) any statutory pension scheme that is connected with it,

which in this paragraph are together referred to as “the relevant schemes”.

(2) In addition to any obligations on record keeping imposed on the scheme manager by regulations made pursuant to section 16 of the 2013 Act, the scheme manager must keep accounts of all income and expenditure of the relevant schemes in a form approved by the Treasury.

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

(4) The scheme actuary must prepare a valuation of the relevant schemes in accordance with any Treasury directions given from time to time pursuant to section 11(2) of the 2013 Act.

(5) The scheme actuary must send a copy of the valuation of the relevant schemes to the scheme manager and to the Treasury.

**Scheme information**

2.—(1) The scheme manager or Secretary of State may publish or provide to the Treasury scheme information (as defined in section 15 of the 2013 Act) whether or not required to do so by any Treasury directions given from time to time pursuant to that section.

(2) Nothing in sub-paragraph (1) requires the scheme manager or Secretary of State to publish or provide to the Treasury any scheme information—

- (a) which the scheme manager or Secretary of State is not required by Treasury directions to publish or provide to the Treasury; or
- (b) which the scheme manager or Secretary of State, apart from sub-paragraph (1), is prohibited lawfully from publishing or providing.

### **Benefit information statements**

3.—(1) The scheme manager must provide a benefit information statement to each active member in accordance with—

- (a) section 14 (information about benefits) of the 2013 Act; and
- (b) any Treasury directions given from time to time pursuant to that section.

(2) Sub-paragraph (1) does not provide a right for an active member to request a benefit information statement.

(3) A benefit information statement provided pursuant to sub-paragraph (1) is to be treated as though it is the information mentioned in regulation 16(2)(a) of the Occupational and Personal Pension Schemes (Disclosure of Information) Regulations 2013<sup>(79)</sup> for the purposes of determining whether or not information must be given under regulation 16(1) of those Regulations.

## **PART 2**

### **Claims and payments**

#### **Claims for benefits**

4.—(1) A person claiming to be entitled to benefits under these Regulations (“the claimant”) must make a claim in writing to the scheme manager.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) must 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 scheme manager may from time to time require for the purposes of these Regulations.

(3) A claim referred to in sub-paragraph (1) may be made by a person or persons other than the claimant where the scheme manager so provides.

(4) Any claim for benefit required in writing under these Regulations, 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 scheme manager 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<sup>(80)</sup>.

#### **Provision of information: continuing entitlement to benefits**

5.—(1) The scheme manager may specify a date by which a person who is in receipt of a benefit under this scheme is to provide the scheme manager with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details;
- (c) evidence of the person’s continuing entitlement to the benefit.

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<sup>(79)</sup> S.I. 2013/2734.

<sup>(80)</sup> 2000 c.7. Section 15(1) has been amended by section 406(1) of, and paragraph 158 of Schedule 17 to, the Communications Act 2003 (c.21).

*Status: This is the original version (as it was originally made).*

(2) Where a person fails to provide material in accordance with sub-paragraph (1), the scheme manager may withhold all, or any part of, any benefit payable to that person.

### **Trivial commutation lump sum**

6.—(1) The scheme manager may pay a person entitled to a pension under this scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under the scheme on the person's death apart from the payment if the conditions specified in sub-paragraph (2) are met.

(2) The conditions are that the payment complies with the following requirements (so far as apply)—

- (a) the contracting-out requirements;
- (b) the preservation requirements (see section 69(2) of the 1993 Act);
- (c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(81)</sup>;
- (d) Part 2 of the Registered Pension Schemes (Authorised Payments) Regulations 2009<sup>(82)</sup>;
- (e) the lump sum rule (see in particular, paragraph 7 of Schedule 29 to the 2004 Act<sup>(83)</sup>: trivial commutation lump sums for the purposes of Part 4 of that Act); and
- (f) the lump sum death benefit rule (see, in particular, paragraph 20 of that Schedule<sup>(84)</sup>: trivial commutation lump sum death benefit for the purposes of that Part).

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

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

### **Beneficiaries who are incapable of looking after their affairs**

7.—(1) In the case of a beneficiary who, in the opinion of the scheme manager, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the scheme manager 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 sub-paragraph (1) discharges the scheme manager from any obligation under the scheme in respect of the amount.

### **Power to extend time limits**

8.—(1) The appropriate authority may extend a time limit mentioned in these Regulations as it applies in a particular case.

(2) The appropriate authority is—

- (a) the Secretary of State in relation to a function of the Secretary of State;
- (b) the scheme manager in relation to a function of the scheme manager.

<sup>(81)</sup> S.I. 1997/785. Regulation 2 has been amended by S.I. 2002/681, 2005/706, 2006/744 and 2009/2930.

<sup>(82)</sup> S.I. 2009/1171.

<sup>(83)</sup> Paragraph 7 has been amended by sections 65 and 67 of, and paragraphs 23 and 29 of Schedule 16 and 1, 3, and 4(1) and (3) of Schedule 18 to, the Finance Act 2011 (c.11), section 42(1) of the Finance Act 2014 (c.26) and S.I. 2006/572.

<sup>(84)</sup> Paragraph 20 has been amended by sections 65 and 67 of, and paragraphs 32 and 39 of Schedule 16 and 1, 3, and 6(1) to (3) of Schedule 18 to, the Finance Act 2011 (c.11).



## PART 3

### Interest

#### **Interest on late payment of benefits and refunds of member contributions**

9.—(1) This paragraph applies if the whole or part of an amount to which this paragraph applies is not paid by the end of the period of one month beginning with the due date.

(2) This paragraph applies to any amount payable by way of a pension, lump sum, refund of contributions under this scheme (other than any amount due under regulations 33 to 35) or interim award.

(3) The scheme manager must pay interest on the unpaid amount to the person to whom it should have been paid unless the scheme manager 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 sub-paragraph (6) applies, “due date”, in relation to an unpaid amount, means—

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Part 5, the day immediately following that of the member’s retirement from pensionable employment;
- (b) in the case of an amount in respect of a pension payable on a member’s death, the day after the date of death;
- (c) in the case of an amount in respect of a lump sum under regulation 112 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 scheme manager; and
  - (ii) the date on which the scheme manager was satisfied that the lump sum may be paid as provided in regulation 112;
- (d) in the case of an amount in respect of any other lump sum under Part 6 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 scheme manager 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 41(2).

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

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

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

## PART 4

### Assignment, offset and forfeiture, etc.

#### **Prohibition on assignment or charging of benefits**

**10.** Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under this scheme is void.

#### **Offset of benefits**

**11.**—(1) If, as a result of a member’s criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member’s employment relationship with the member’s employer, the Secretary of State—

- (a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss; or
- (b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.

(2) Sub-paragraph (1) does not apply so far as the pension or other benefit—

- (a) is a guaranteed minimum pension; or
- (b) arises out of a transfer payment.

(3) If the Secretary of State proposes to exercise the power under sub-paragraph (1), the Secretary of State must give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction may be made under sub-paragraph (1) until the member’s obligation to make good the loss has become enforceable—

- (a) under the order of a competent court; or
- (b) in consequence of an award of an arbitrator or, in Scotland, an arbiter to be appointed (failing agreement by the parties) by the sheriff.

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

#### **Forfeiture of rights to benefits**

**12.**—(1) The Secretary of State may direct that all or part of any rights to benefits or other amounts payable to or in respect of a member under these Regulations be forfeited if—

- (a) the member is convicted of any of the offences specified in sub-paragraph (2); and
- (b) the offence was committed before the benefit or other amount becomes payable.

(2) The offences are—

- (a) an offence in connection with employment that qualifies the member to belong to this 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 sub-paragraph (2)(a), “forfeiture certificate” means a certificate stating that the Secretary of State is satisfied that the offence—

- (a) has been gravely injurious to the State; or
- (b) is liable to lead to serious loss of confidence in the public service.

(4) The Secretary of State may direct that all or part of any rights to benefits or other amounts payable in respect of a member under these Regulations be forfeited where the benefits or amounts are payable to a person to whom sub-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 sub-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 paragraph (a) or (b) who is specified in a notice given under paragraph 9(3) of Schedule 14; or
  - (d) a person to whom such benefits or amounts are payable under the member’s will or on the member’s intestacy.

(6) A guaranteed minimum pension may be forfeited only if sub-paragraph (1) applies in the case of an offence within sub-paragraph (2)(b).

This is subject to sub-paragraph (7).

(7) This sub-paragraph is without prejudice to section 2 of the Forfeiture Act 1870<sup>(85)</sup> (under which forfeiture is required in cases of treason, subject to whole or partial restoration under section 70(2) of the Criminal Justice Act 1948<sup>(86)</sup>).

## PART 5

### Insolvency

#### **Bankruptcy of person entitled to benefits**

**13.**—(1) On the bankruptcy of any person entitled to a benefit under this 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 as provided for in sub-paragraph (2).

(2) Where, following the bankruptcy of any person entitled to a benefit under this scheme, the court makes an income payments order under section 310 of the Insolvency Act 1986<sup>(87)</sup> that requires the scheme manager to pay all or part of the benefit to the person’s trustee in bankruptcy the Secretary of State must comply with that order.

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<sup>(85)</sup> 1870 c.23.

<sup>(86)</sup> 1948 c.58.

<sup>(87)</sup> 1986 c.45. Section 310 has been amended by section 122 of, and paragraph 15 of Schedule 3 to, the Pensions Act 1995 (c.26), section 18 of, and paragraph 2 of Schedule 2 to, the Welfare Reform and Pensions Act 1999 (c.30), sections 259 and 278(2) of, and Schedule 26 to, the Enterprise Act 2002 (c.40) and S.I. 2011/1730.

## PART 6

### Determinations

#### Determination of questions

**14.—**(1) Except as otherwise provided by these Regulations, any question arising under this scheme is to be determined by the scheme manager.

(2) Any such disagreement as is referred to in section 50 of the 1995 Act<sup>(88)</sup> (resolution of disputes) must be resolved by the scheme manager in accordance with any arrangements applicable under that section.

#### Determinations by medical practitioners

**15.—**(1) The scheme manager may make arrangements for functions under this scheme in relation to decisions to which sub-paragraph (2) applies that are exercisable by the scheme manager to be discharged by—

- (a) a medical practitioner (whether practicing alone or as part of a group) whom the scheme manager has approved to act on the scheme manager's behalf; or
- (b) a body (incorporated or unincorporated) which—
  - (i) employs medical practitioners (whether under a contract of service or for services); and
  - (ii) is so approved.

(2) This paragraph applies to a decision as to a person's health or degree of physical or mental infirmity that is required for the purposes of this scheme and, in particular, a decision required for the purposes of—

- (a) regulation 53(5)(b) (procedure for allocation election under regulation 51);
- (b) regulation 76(9) (pension credit member);
- (c) regulation 90(2)(c) or (3)(b) (early retirement on ill health: active members);
- (d) regulation 93(1) or (5) (re-assessment of ill health pension);
- (e) regulation 94(1)(c) or (2)(c) (early retirement on ill health: deferred members);
- (f) regulation 109(1) (option to exchange pension for lump sum: serious ill health);
- (g) regulation 122(3)(b)(i) (dependency because of physical or mental impairment);
- (h) paragraph 7(1) of this Schedule (beneficiary incapable of looking after own affairs);
- (i) section 229(3)(a) of the 2004 Act<sup>(89)</sup> (determining whether an individual satisfies the severe ill health condition).

(3) In relation to such a decision, the scheme manager may require a person entitled or claiming to be entitled to benefit under this scheme to submit to a medical examination by a medical practitioner selected by the scheme manager.

(4) The scheme manager must also offer the person an opportunity to submit a report from the person's own medical adviser following an examination of the person by the medical adviser.

(5) In taking a decision mentioned in sub-paragraph (1), the scheme manager must take into consideration both—

<sup>(88)</sup> Section 50 was substituted by section 273 of the Pensions Act 2004 (c.35) and amended by sections 16(1) to (6) of the Pensions Act 2007 (c.22).

<sup>(89)</sup> Section 229(3)(a) was substituted by section 660 of, and paragraphs 1 and 6(1) and (3) of Schedule 17 to, the Finance Act 2011 (c.11).

- (a) the report mentioned in sub-paragraph (4); and
- (b) the report of the medical practitioner who carries out the medical examination mentioned in sub-paragraph (3).

## PART 7

### Taxation

#### Deduction of tax

**16.**—(1) The scheme manager must deduct from any payment under this scheme any tax which is required to be paid in respect of it.

(2) Subject to sub-paragraph (3), if a person's entitlement to a benefit or transfer payment under these Regulations—

- (a) constitutes a benefit crystallisation event in accordance with section 216 of the 2004 Act<sup>(90)</sup>; and
- (b) a lifetime allowance charge under that Act is payable in respect of that event,

that charge must be paid by the scheme administrator.

(3) The member's present or future benefits or transfer payment in respect of which any charge under sub-paragraph (2) arises must be reduced by an amount that fully reflects the amount of the charge paid by the scheme administrator and is to be calculated by reference to advice provided by the scheme actuary for that purpose.

(4) Where—

- (a) the scheme manager's liability to pay a pension under regulation 109 is discharged by the payment of a lump sum in accordance with paragraph (4), (5), (6) or (7) of that regulation; and
- (b) that lump sum payment is made to a member who has reached the age of 75,

the scheme administrator must deduct tax at the rate of 55% (or such other amount as applies from time to time) from the lump sum payable in accordance with section 205A of the 2004 Act<sup>(91)</sup>.

(5) Where—

- (a) a member has given written notice to the scheme administrator that a lump sum payable under regulation 112 is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act<sup>(92)</sup>; and
- (b) has not revoked that notice,

the scheme administrator must deduct tax at the rate of 55% (or such other amount as applies from time to time) from the lump sum payable in accordance with section 206 of the 2004 Act<sup>(93)</sup>.

(6) Where—

- (a) a lump sum on death is payable in accordance with regulation 112; and

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<sup>(90)</sup> Section 216 has been amended by section 101 of, and paragraphs 1, 31 and 42 of Schedule 10 to, the Finance Act 2005 (c.7), section 161(1) of, and paragraphs 1 and 30 of Schedule 23 to, the Finance Act 2006 (c.25), section 92 of, and paragraphs 1(1) and (3), 4 and 5 of Schedule 29 to, the Finance Act 2008 (c.9) and section 65 of, and paragraphs 43, 62 and 73 of Schedule 16 to, the Finance Act 2011 (c.11).

<sup>(91)</sup> Section 205A was inserted by section 65 of, and paragraph 40 of Schedule 16 to, the Finance Act 2011, and amended by section 219(1) of, and paragraphs 119 and 122 of Schedule 46 to, the Finance Act 2013 (c.29).

<sup>(92)</sup> Paragraph 14 of Schedule 29 has been amended by section 65 of, and paragraphs 32 and 34 of Schedule 16 to, the Finance Act 2011.

<sup>(93)</sup> Section 206 has been amended by section 65 of, and paragraph 41 of Schedule 16 to, the Finance Act 2011 and section 219(1) of, and paragraphs 119 and 123 of Schedule 46 to, the Finance Act 2013.

*Status: This is the original version (as it was originally made).*

- (b) that lump sum is payable in respect of a member who had reached the age of 75 at the date of the member's death,

the scheme administrator must deduct tax at the rate of 55% (or such other amount as applies from time to time) from the lump sum payable in accordance with section 206 of the 2004 Act.

(7) A person who is entitled to a benefit under these regulations must (whether or not he intends to rely on entitlement to transitional protection, an enhanced lifetime allowance or to enhanced protection) give to the scheme administrator such information as will enable the scheme administrator to determine—

- (a) whether any lifetime allowance charge is payable in respect of the benefit; and  
(b) if so, the amount of that charge.

(8) If a person claiming a benefit under these regulations intends to rely on entitlement to an enhanced lifetime allowance by virtue of any of the provisions listed in section 256(1) of the 2004 Act<sup>(94)</sup> (enhanced lifetime allowance regulations), that person must give to the scheme administrator—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes (Enhanced Lifetime Allowance) Regulations 2006<sup>(95)</sup> in respect of that entitlement; and  
(b) the information referred to in sub-paragraph (7).

(9) If a person claiming a benefit under these regulations intends to rely on entitlement to transitional protection against a lifetime allowance charge in accordance with paragraph 14 of Schedule 18 to the Finance Act 2011<sup>(96)</sup> or paragraph 1 of Schedule 22 to the Finance Act 2013, that person must give to the scheme administrator—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes (Lifetime Allowance Transitional Protection) Regulations 2011<sup>(97)</sup> or Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Notification) Regulations 2013<sup>(98)</sup> in respect of that entitlement; and  
(b) the information referred to in sub-paragraph (7).

(10) If a person claiming benefit under these regulations intends to rely on entitlement to individual protection against a lifetime allowance change in accordance with paragraph 1 of Schedule 6 to the Finance Act 2014<sup>(99)</sup>, the person must give to the scheme administrator—

- (a) the reference number issued by the Commissioners under the Registered Pension Schemes and Relieved Non-UK Pension Schemes (Lifetime Allowance Transitional Protection) (Individual Protection 2014 Notification) Regulations 2014<sup>(100)</sup> in respect of that entitlement; and  
(b) the information referred to in sub-paragraph (7).

(11) The information referred to in sub-paragraph (7) and, as the case may be, reference numbers referred to in sub-paragraph (8)(a), (9)(a) or (10)(a), must be given to the scheme administrator—

- (a) at the time the person makes a claim for a benefit; or  
(b) where that information has not been provided at the time of making the claim, within such time as the scheme administrator specifies in writing.

(12) Where the person fails to provide all, or part of, the information referred to in sub-paragraph (7) and, as the case may be, reference numbers referred to in sub-paragraph (8)(a), (9)(a)

<sup>(94)</sup> Section 256(1) has been amended by section 161(1) of, and paragraphs 1 and 42 of Schedule 23 to, the Finance Act 2006.

<sup>(95)</sup> S.I. 2006/131 as amended by S.I. 2006/3261, 2009/56 and 2010/561.

<sup>(96)</sup> Paragraph 14 has been amended by section 47(1) and (2) of the Finance Act 2013 and S.I. 2013/1730.

<sup>(97)</sup> S.I. 2011/1752 as amended by S.I. 2013/1740.

<sup>(98)</sup> S.I. 2013/1741.

<sup>(99)</sup> 2014 c.26.

<sup>(100)</sup> S.I. 2014/1842.

or (10)(a) within the time limits specified by the scheme administrator where relevant, the scheme administrator may treat the whole of the benefit as a chargeable benefit and pay the charge on that basis.

(13) Practitioners and non-GP providers must provide the information required by regulation 15A of the Registered Pension Scheme (Provision of Information) Regulations 2006<sup>(101)</sup> in respect of their benefits under the scheme in a manner prescribed from time to time by the scheme manager.

(14) This sub-paragraph applies to a member who—

(a) is liable to an annual allowance charge in accordance with section 237A of the 2004 Act<sup>(102)</sup>; and

(b) meets the conditions specified in paragraph (1) of section 237B of that Act<sup>(103)</sup>.

(15) A member to whom sub-paragraph (14) applies may give notice in writing to the scheme administrator specifying that the scheme administrator and the member are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that member in accordance with section 237B of the 2004 Act.

(16) Unless the scheme administrator's liability for an annual allowance charge referred to in sub-paragraph (15) is discharged in accordance with section 237D of the 2004 Act<sup>(104)</sup>—

(a) that annual allowance charge must be paid by the scheme administrator on behalf of the member; and

(b) that member's present or future benefits in respect of which that charge arises must be adjusted in accordance with section 237E of the 2004 Act<sup>(105)</sup> and must be calculated by reference to advice provided by the scheme actuary for that purpose.

(17) "Enhanced lifetime allowance" and "enhanced protection" are to be construed in accordance with the 2004 Act.

### **Prohibition on unauthorised payments**

17. Nothing in these regulations requires or authorises the making of any payment which, if made, would be an unauthorised payment for the purposes of Part 4 of the 2004 Act (see section 160(5) of that Act).

### **Scheme administrator**

18. For the purposes of this Part of this Schedule and Part 4 of the 2004 Act, the scheme administrator is the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG)<sup>(106)</sup>.

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<sup>(101)</sup> S.I. 2006/567. Regulation 15A was inserted by regulations 2 and 9 of S.I. 2011/1797.

<sup>(102)</sup> Section 237A was inserted by section 66 of, and paragraphs 1 and 15 of Schedule 17 to, the Finance Act 2011 (c.11) and amended by section 219(1) of, and paragraphs 119 and 128 of Schedule 46 to, the Finance Act 2013 (c.29).

<sup>(103)</sup> Section 237B was inserted by section 66 of, and paragraphs 1 and 15 of Schedule 17 to, the Finance Act 2011 and amended by section 219(1) of, and paragraphs 119 and 129 of Schedule 46 to, the Finance Act 2013 (c.29).

<sup>(104)</sup> Section 237D was inserted by section 66 of, and paragraphs 1 and 15 of Schedule 17 to, the Finance Act 2011.

<sup>(105)</sup> Section 237E was inserted by section 66 of, and paragraphs 1 and 15 of Schedule 17 to, the Finance Act 2011.

<sup>(106)</sup> The Authority was established by S.I. 2005/2414.

## SCHEDULE 4

Regulations 15 &amp; 16

## Opting out and re-joining

**Opting out of the scheme**

1.—(1) A person who does not wish to, or who no longer wishes to, participate in this scheme may opt out of the scheme at any time by giving notice in writing to the person's employing authority and the person will cease to be an active member of the scheme on the date the notice takes effect.

(2) A notice referred to in sub-paragraph (1) takes effect—

- (a) from the first day of the pay period immediately following its receipt by the employing authority; or
- (b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.

(3) A person who opts out of the scheme under sub-paragraph (1) within one month of commencing NHS employment is to be treated as never having been included in the scheme in respect of that opt out and, if applicable, any contributions made by, or on behalf, of that person for the period before the opt out took effect must be repaid.

(4) A notice under sub-paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person's—

- (a) automatic enrolment date; or
- (b) automatic re-enrolment date, where that notice was not given within the 12 months immediately preceding that date.

(5) Sub-paragraph (6) applies if a person—

- (a) belongs or would belong to group D in regulation 27(1); and
- (b) has more than one employment or engagement to which group D applies.

(6) If the person gives a notice as mentioned in sub-paragraph (1), the notice must relate to all of the employments or engagements.

**Re-joining the scheme**

2. A person who has opted out of this scheme pursuant to paragraph 1 may, if eligible to do so pursuant to that paragraph, join or re-join the scheme by giving notice in writing to the person's employing authority and on doing so will be included in this scheme on the first day of the first pay period after the notice is received, or such later date (which must be the first day of a pay period) as is specified in the notice.

## SCHEDULE 5

Regulation 18(1)

## Membership gateways

## PART 1

## NHS organisations

1. The following are NHS organisations for the purposes of these Regulations—



- (a) a Special Health Authority established under section 28 of the 2006 Act<sup>(107)</sup> or section 22 of the 2006 (Wales) Act<sup>(108)</sup>;
- (b) a Local Health Board established under section 11 of the 2006 (Wales) Act;
- (c) a National Health Service trust established under section 25 of the 2006 Act<sup>(109)</sup> or section 18 of the 2006 (Wales) Act;
- (d) an NHS foundation trust within the meaning of section 30(1) of the 2006 Act<sup>(110)</sup>;
- (e) the National Health Service Commissioning Board established under section 1H of the 2006 Act<sup>(111)</sup>;
- (f) a Clinical Commissioning Group established under section 1I of the 2006 Act<sup>(112)</sup>.

2. The Secretary of State may agree to treat any other body which is constituted under an Act relating (in whole or in part) to health services as an NHS organisation for the purposes of these Regulations.

## PART 2

### Medical contractors, dental contractors and independent providers

3. The following are medical contractors for the purposes of these Regulations—

- (a) a GMS practice;
- (b) a PMS practice;
- (c) an APMS contractor;
- (d) an OOH provider;
- (e) a non-GP provider.

4. The following are dental contractors for the purposes of these Regulations—

- (a) a GDS contractor;
- (b) a PDS contractor.

5. An independent provider, for the purposes of these Regulations, is a person who satisfies the requirements of paragraph (2) of regulation 150.

## PART 3

### Medical practitioners and dental practitioners

6. The following are medical practitioners for the purposes of these Regulations—

- (a) a medical practitioner;
- (b) a locum medical practitioner;
- (c) an ophthalmic practitioner.

7. The following are dental practitioners for the purposes of these Regulations—

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<sup>(107)</sup>Section 28 has been amended by section 55(1) of, and paragraph 13 of Schedule 4 to, the Health and Social Care Act 2012 (c.7).  
<sup>(108)</sup>Section 22 has been amended by section 297 of, and paragraphs 12 and 18 of Schedule 21 to, the Health and Social Care Act 2012.

<sup>(109)</sup>Section 25 is prospectively repealed by section 179(2) of the Health and Social Care Act 2012.

<sup>(110)</sup>Section 30(1) has been amended by section 159(1) of the Health and Social Care Act 2012.

<sup>(111)</sup>Section 1H was inserted by section 9 of the Health and Social Care Act 2012.

<sup>(112)</sup>Section 1I was inserted by section 10 of the Health and Social Care Act 2012.

- (a) a dental practitioner;
- (b) a foundation trainee.

## PART 4

### Determination employers

8. A determination employer is a person who is the employer of a person in respect of whom a determination has been made pursuant to section 25(5) of the 2013 Act.

## SCHEDULE 6

Regulation 18(2)

### Persons to whom the scheme may be extended

1.—(1) The categories or descriptions of persons to whom the scheme may be extended by determination pursuant to section 25 of the 2013 Act are as follows.

(2) A person, or class of persons—

(a) who is—

- (i) wholly or mainly engaged in health services, whether provided under the 2006 Act, the 2006 (Wales) Act or otherwise; or
- (ii) an officer of a government department serving on the medical or nursing staff of that department or at or for the purposes of a hospital maintained by that department, and who, if the person were in the employment of an NHS organisation, would be eligible to join the scheme;

(b) who is a member of a body constituted under the 2006 Act or the 2006 (Wales) Act, other than a National Health Service trust or an NHS foundation trust;

(c) whose employment by an employing authority has been transferred to another body pursuant to an enactment relating (in whole or in part) to health services.

(3) A person who, while continuing in, or within twelve months after leaving, employment in which the person was entitled to participate in pension benefits provided under these Regulations (any period spent by that person on an approved course of study or training being left out of account), enters such other employment as may be approved by the Secretary of State for the purposes of these Regulations.

(4) An approval given for the purposes of sub-paragraph (3) may specify provisions of these regulations which—

(a) are not to apply to the person; or

(b) are to apply to the person subject to such modifications as are specified.

## SCHEDULE 7

Regulation 19

### Restrictions on eligibility: Former members and TUPE transfers

#### Introduction

1. A person (P) who satisfies condition A or condition B is not eligible to be an active member of this scheme in respect of any period of NHS employment on or after 1st April 2015 (the relevant employment) with effect from the later of—

- (a) that date; and
- (b) the date on which condition A or B (as the case may be) is met.

#### Condition A

2. Condition A is that—

- (a) P is employed by an employing authority;
- (b) the relevant employment commences in accordance with an arrangement under which it is the intention of the employing authority to retain P as an employee following P's objection to P's transfer to another body (which is not an employing authority) ("a retention arrangement"); and
- (c) but for the retention arrangement—
  - (i) the transfer of P's employment would be a relevant transfer for the purposes of the TUPE Regulations; or
  - (ii) P's employment would, in the Secretary of State's opinion, transfer from the employing authority to another employer in the public sector by virtue of an arrangement broadly equivalent to a TUPE transfer.

#### Condition B

3. Condition B is that—

- (a) P is seconded from an employing authority to another body (which is not an employing authority), but remains an employee of the employing authority during the secondment; and
- (b) the purpose of the secondment is, in the opinion of the Secretary of State, for P to assist that other body in the discharge of any functions which have previously transferred to that other body from the employing authority.

#### Exception

4. P may be an active member of this scheme in respect of the relevant employment if the Secretary of State considers it appropriate, having regard to the nature of the employment and the circumstances under which it takes place, to accept P as such a member.

#### Broadly equivalent to TUPE transfer

5. The reference in paragraph 2(c)(ii) to an arrangement broadly equivalent to a TUPE transfer is to an arrangement—

- (a) which, having regard to the purpose of the arrangement and its effect on the functions of the employing authority, the Secretary of State considers has that equivalence; and

- (b) under which the Secretary of State requires the parties to agree that the rights of the person whose employment is being transferred should, as far as practicable, be treated no less favourably than they would have been under a TUPE transfer.

### **TUPE expressions**

**6.** In this Schedule—

“the TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006(**113**);

“a TUPE transfer” means a transfer of an undertaking to which the TUPE Regulations apply.

## SCHEDULE 8

Regulation 19

### Restrictions on eligibility: Secondments relating to qualifying contracts

#### **Retention arrangement**

- 1.** For the purposes of this Schedule, a retention arrangement is one under which—
- (a) a person (P) is seconded from an employing authority (“the sending employing authority”) to another body which is not an employing authority (“the other body”); and
  - (b) P, pursuant to an intention of the sending employing authority, remains an employee of that authority in circumstances where P’s performance of services pursuant to a qualifying contract for the other body counts as pensionable service only by reason of the retention arrangement.

#### **Persons subject to retention arrangements**

**2.—(1)** A person who on 2nd April 2014, and pursuant to a retention arrangement which was entered into before that date, remains engaged by the other body to perform services pursuant to a qualifying contract, may not contribute to or accrue pensionable service under this scheme in respect of the performance of those services.

(2) A person who, pursuant to the retention arrangement referred to in sub-paragraph (1) is, on or after 2nd April 2014 engaged by the other body to perform services pursuant to the qualifying contract referred to in that sub-paragraph, may not contribute to or accrue pensionable service under this scheme in respect of the performance of any services under that contract.

(3) A person who on, pursuant to a retention arrangement (other than the one referred to in sub-paragraph (1)) is engaged by the other body to perform services pursuant to a qualifying contract, may not contribute to or accrue pensionable service under this scheme in respect of the performance of any services under that contract.

#### **Exceptions**

**3.** The Secretary of State may exceptionally allow a person referred to in paragraph 2 to contribute to or accrue pensionable service under this scheme if the Secretary of State considers that appropriate having regard to the nature of the person’s employment and the circumstances under which it takes place.

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(113) S.I. 2006/246 as amended by S.I. 2009/592, 2010/93 and 2014/16, 386 and 853.

### **Other body saving**

4. Nothing in this Schedule prevents the other body referred to in paragraph 2 from applying for approval as an employing authority pursuant to regulation 151.

### **Qualifying contract**

5. References in this Schedule to a qualifying contract must be construed in accordance with regulation 150(3).

## SCHEDULE 9

Regulation 24

### Pension accounts

## PART 1

### Interpretation

#### **Interpretation**

1. In this Schedule—

“index adjustment” means—

- (a) in relation to the opening balance of earned pension for a scheme year (other than the opening balance of club transfer earned pension), the percentage increase or decrease in prices specified in an order made by the Treasury under section 9(2) of the 2013 Act in relation to the previous scheme year, plus 1.5%;
- (b) in relation to the opening balance of club transfer earned pension for a scheme year, the adjustment that would apply to the opening balance of that amount of earned pension under the sending scheme for the previous scheme year;

“AP index adjustment” means, in relation to the opening balance of additional pension for a scheme year, the percentage increase or decrease in prices specified in an order made by the Treasury under section 9(2) of the 2013 Act in relation to the previous scheme year;

“the leaving year” means the scheme year in which the relevant last day falls;

“the relevant last day” means—

- (a) for a member who has made a partial retirement application, the day before the entitlement day for a partial retirement pension; and
- (b) otherwise, the last day of pensionable service.

#### **Pensionable service**

2. For the purpose of this Schedule, a person who re-enters pensionable service after a break in service not exceeding 5 years is taken to be in pensionable service during the break.

#### **Meaning of “leaver index adjustment”**

3.—(1) The leaver index adjustment for an amount of accrued earned pension other than an amount of club transfer accrued earned pension is an amount calculated as follows—

*Step 1*

*Status: This is the original version (as it was originally made).*

Add 1.5 to the percentage increase or decrease in prices specified in an order made by the Treasury under section 9(2) of the 2013 Act in relation to the leaving year.

*Step 2*

Multiply the result at Step 1 by

$$\frac{A}{B}$$

where—

A is the number of complete months in the period between the beginning of the leaving year and the end of the relevant last day; and

B is 12.

The resulting percentage is the leaver index percentage.

*Step 3*

Multiply the amount of accrued earned pension by the leaver index percentage.

The resulting amount is the leaver index adjustment.

(2) The leaver index adjustment for an amount of club transfer accrued earned pension is the adjustment that would apply under the sending scheme to an amount of accrued earned pension equal to the amount of club transfer accrued earned pension specified in the active member's account at the end of the relevant last day.

(3) In this paragraph, "complete months" includes an incomplete month that consists of at least 16 days.

**Meaning of "leaver AP index adjustment"**

4.—(1) The leaver AP index adjustment for an amount of accrued additional pension is calculated in accordance with paragraph (2).

(2) The leaver AP index adjustment is an amount equal to the amount of leaver index adjustment found if—

- (a) the accrued additional pension were an accrued earned pension; and
- (b) 1.5 is not added to the percentage increase or decrease in prices specified in an order made by the Treasury in Step 1 of paragraph 3(1).

**Meaning of "full retirement earned pension"**

5.—(1) The amount of full retirement earned pension is the sum of—

- (a) the amount of accrued earned pension calculated under paragraph 28(2); and
- (b) the leaver index adjustment for that amount.

(2) In calculating the amount of full retirement earned pension, the leaver index adjustment is not applied to the amount of accrued earned pension if a transfer payment is made in respect of the member's rights to that accrued pension before the end of the last active scheme year.

**Meaning of "full retirement additional pension"**

6.—(1) The amount of full retirement additional pension is the sum of—

- (a) the amount of accrued additional pension calculated under paragraph 28(3); and
- (b) the leaver AP index adjustment for that amount.

(2) In calculating the amount of full retirement additional pension, the leaver AP index adjustment is not applied to the amount of accrued additional pension if a transfer payment is made in respect of the member's rights to that accrued pension before the end of the last active scheme year.

**Meaning of “partial retirement earned pension”**

7. The amount of partial retirement earned pension is the sum of—
- (a) the amount of accrued earned pension calculated under paragraph 29(2); and
  - (b) the leaver index adjustment for that amount.

**Meaning of “partial retirement additional pension”**

8. The amount of partial retirement additional pension is the sum of—
- (a) the amount of accrued additional pension calculated under paragraph 29(3); and
  - (b) the leaver AP index adjustment for that amount.

**Meaning of “actuarial reduction”**

9.—(1) In these Regulations, “actuarial reduction” means the actuarial reduction that is applied (after obtaining the advice of the scheme actuary) when calculating the annual rate of pension payable to a member who, on the entitlement day for a pension other than a pension specified in sub-paragraph (2) has not reached normal pension age.

- (2) The pensions are—
- (a) an age retirement pension;
  - (b) a premature retirement pension unless the additional contribution option applies (see regulation 32(7));
  - (c) an ill-health pension.

**Meaning of “conversion amount”**

10. In these Regulations, “conversion amount”, in relation to any pension converted in part to a lump sum under regulation 77, means the amount of pension converted to a lump sum.

## PART 2

### Active member's account

**Establishment of active member's account**

11.—(1) A pension account must be established for each active member (“the active member's account”) from the first day of pensionable service under this scheme.

(2) If a person is an active member in relation to more than one employment, only one active member's account is to be established.

(3) The active member's account must remain open until the member leaves all pensionable service under this scheme.

*Status: This is the original version (as it was originally made).*

### **Receipt of club transfer values**

**12.**—(1) This paragraph applies if a club transfer value is received from another club scheme in relation to an active member of this scheme.

(2) On receipt of the transfer value payment, the active member's account must be credited with an amount of club transfer earned pension the member is entitled to under Section 3 of Chapter 2 of Part 7 (transfers).

### **Amount of pension for a scheme year**

**13.**—(1) This paragraph applies in relation to every scheme year in which an active member's account is open.

(2) The active member's account must specify—

- (a) the amount of standard earned pension (if any) for the year; and
- (b) the amount of club transfer earned pension (if any) for the year.

(3) The standard earned pension is  $1/54^{\text{th}}$  of the member's pensionable earnings for the year.

(4) The club transfer earned pension—

- (a) is the amount which the member is entitled to count under Section 3 of Chapter 2 of Part 7 (transfers);
- (b) must be specified separately in relation to each sending scheme.

### **Account to specify opening balance and index adjustment**

**14.**—(1) This paragraph applies in relation to every scheme year in which an active member's account is open other than the scheme year in which the account is established.

(2) The active member's account must specify—

- (a) the opening balance of standard earned pension for the scheme year and the index adjustment for that opening balance; and
- (b) the opening balance of the club transfer earned pension (if any) for the scheme year and the index adjustment for that opening balance.

(3) The opening balance in relation to a description of pension—

- (a) for the scheme year immediately following the scheme year in which the active member's account is established, means the amount of that pension for the previous scheme year as at the end of the previous scheme year;
- (b) for any subsequent scheme year, means the sum of the following amounts—
  - (i) the opening balance of that pension for the previous scheme year and the index adjustment for that opening balance; and
  - (ii) the amount of that pension for the previous scheme year as at the end of the previous scheme year.

(4) In this regulation, "a description of pension" means—

- (a) standard earned pension; and
- (b) club transfer earned pension (if any).

### **Actuarial reduction buy-out**

**15.** In relation to a scheme year which falls within a buy-out period (see regulation 45(6)) the entry in the account relating to the standard earned pension must note—



- (a) that a buy-out election has effect (unless it is revoked); and
- (b) the number of years in respect of which the actuarial reduction is to be bought out.

## PART 3

### Deferred member's account

#### **Establishment of deferred member's account**

- 16.** When an active member leaves all pensionable service and becomes a deferred member—
- (a) the active member's account must be closed; and
  - (b) a pension account for the deferred member must be established ("deferred member's account").

#### **Account to specify amount of accrued earned pension and leaver index adjustment**

- 17.** The deferred member's account must specify—
- (a) the amount of accrued earned pension calculated under paragraph 30; and
  - (b) the leaver index adjustment for that amount.

#### **Deferred member's account closed after break not exceeding 5 years**

- 18.—(1)** If a deferred member re-enters pensionable service under this scheme after a break in service not exceeding 5 years—
- (a) the deferred member's account must be closed; and
  - (b) the active member's account must be re-established.
- (2)** The active member's account—
- (a) must specify the amount of accrued earned pension as at the beginning of the break in service; and
  - (b) must be adjusted as if the member had continued as an active member during the break in service but had received no pensionable earnings.

#### **Deferred member's account remains open after a break in service of more than 5 years**

- 19.—(1)** This paragraph applies if a deferred member re-enters pensionable service under this scheme after a break in service of more than 5 years.
- (2)** When the deferred member re-enters pensionable service under this scheme ("the further service")—
- (a) the deferred member's account remains open; and
  - (b) an active member's account must be established in respect of the further service.

## PART 4

### Pensioner member's account

#### **Pension accounts for active or deferred members who become pensioner members**

**20.**—(1) When an active member becomes entitled to payment of a retirement pension other than a partial retirement pension in respect of any pensionable service—

- (a) the active member's account and any additional pension account must be closed; and
- (b) a pension account for the pensioner member must be established ("the pensioner member's account").

(2) When a deferred member becomes entitled to payment of a retirement pension other than a partial retirement pension in respect of any pensionable service—

- (a) the deferred member's account and any additional pension account must be closed; and
- (b) a pension account for the pensioner member must be established ("the pensioner member's account").

(3) The pensioner member's account must specify—

- (a) the amount of full retirement earned pension payable to the member, and for that amount—
  - (i) the actuarial reduction (if any);
  - (ii) the late payment actuarial increase (if any); and
  - (iii) the conversion amount (if any);
- (b) the amount of full retirement additional pension payable to the member, and for that amount—
  - (i) the actuarial reduction (if any);
  - (ii) the late payment actuarial increase (if any); and
  - (iii) the conversion amount (if any); and
- (c) the amount of an allocation pursuant to an election by the member under regulation 51.

#### **Pension accounts for partial retirement members**

**21.**—(1) On the entitlement day for a partial retirement pension—

- (a) a pensioner member's account must be established for the member (M);
- (b) if M is an active member, the active member's account must be adjusted by reducing the amount of accrued earned pension specified in that account by the specified percentage (see regulation 84(3));
- (c) if M is also a deferred member, the deferred member's account must be adjusted by reducing the amount of accrued earned pension specified in that account by the specified percentage;
- (d) after the adjustment, Parts 2 and 3 apply in relation to M as if the amount of accrued earned pension specified in the active member's account or deferred member's account had always been reduced by the specified percentage; and
- (e) if M has elected under regulation 84(3)(b) to receive additional pension with the partial retirement earned pension, the additional pension account must be closed.

(2) The pensioner member's account must specify—

- (a) the amount of partial retirement earned pension payable to M, and for that amount—

- (i) the actuarial reduction (if any);
  - (ii) the late payment actuarial increase (if any); and
  - (iii) the conversion amount (if any); and
- (b) the amount of partial retirement additional pension payable to M, and for that amount—
- (i) the actuarial reduction (if any);
  - (ii) the late payment actuarial increase (if any); and
  - (iii) the conversion amount (if any).
- (3) The entitlement day is the election day for the purposes of regulation 84.

## PART 5

### Additional pension account

#### **Establishment of additional pension account**

**22.**—(1) An additional pension account must be established for each active member in respect of whom an additional pension election is made.

(2) If the member is an active member in relation to more than one employment, only one additional pension account is to be established.

- (3) The additional pension account must remain open until—
- (a) an additional pension is paid in respect of the member;
  - (b) a transfer payment is made in respect of the member's rights to the accrued additional pension; or
  - (c) all additional pension contributions are refunded under regulation 63 or 67.

(4) The additional pension account must record separately the amount referable to each election made by a member under regulation 55(3)(b) (self and survivor).

#### **Account to specify amount of additional pension**

**23.**—(1) This paragraph applies in relation to every scheme year in which an additional pension election is made.

(2) The additional pension account must specify in relation to any additional pension election made in that scheme year an amount equal to the annual rate of additional (self only) pension specified in the additional pension election.

#### **Account to specify opening balance and AP index adjustment**

**24.**—(1) This paragraph applies in relation to every scheme year in which an additional pension account is open other than the scheme year in which the account is established.

(2) The account must specify the opening balance of additional pension for the scheme year and the AP index adjustment for that opening balance.

- (3) The opening balance of additional pension—
- (a) for the scheme year immediately following the scheme year in which the additional pension account is established, means the amount of additional pension specified in the account as at the end of the previous scheme year; and
  - (b) for any subsequent scheme year, means the sum of the following amounts—

*Status: This is the original version (as it was originally made).*

- (i) the opening balance of additional pension for the previous scheme year;
- (ii) the AP index adjustment for that opening balance; and
- (iii) the amount of additional pension for the previous scheme year.

**Partial retirement pension abated to zero**

- 25.—(1) This paragraph applies if—
- (a) an additional pension is payable with a partial retirement pension; and
  - (b) the partial retirement pension is abated to zero under regulation 86(3).
- (2) The additional pension account must be re-established and credited with an amount equal to the annual rate of additional (self only) pension.

**PART 6**

**Pension credit member's account**

**Pension credit member's pension account**

- 26.—(1) A pension account must be established for each pension credit member (“the pension credit member’s account”).
- (2) The pension credit member’s account must specify the amount of credited pension and for that amount—
- (a) the actuarial adjustment (if any); and
  - (b) the conversion amount (if any).
- (3) In these Regulations, “amount of credited pension” means an amount equal to the pension credit calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 to the 1999 Act.

**Separate account for each capacity of membership**

- 27.—(1) If a pension credit member is also an active member, deferred member or pensioner member, the pension credit member’s account is in addition to the other account or accounts to be established under this Schedule in respect of the member in the other capacity.
- (2) If a pension credit member has rights under this scheme which are attributable, directly or indirectly, to pension credit derived from the rights of more than one pension debit member of this scheme, a separate account is to be established under this paragraph in respect of the pension credit attributable to the rights of each such pension debit member.

**PART 7**

**Calculation of accrued pension**

**Calculation of amount of accrued pension for purposes of full retirement**

- 28.—(1) For the purpose of a full retirement pension, the amount of accrued pension is the sum of—
- (a) the amount of accrued earned pension under sub-paragraph (2); and

- (b) the amount of accrued additional pension (if any) under sub-paragraph (3).
- (2) The amount of accrued earned pension is the sum of the following amounts specified in the active member's account as at the end of the last day of pensionable service—
  - (a) the opening balance of standard earned pension for the last active scheme year and the index adjustment for that opening balance;
  - (b) the amount of standard earned pension (if any) for the last active scheme year;
  - (c) the opening balance of club transfer earned pension (if any) for the last active scheme year and the index adjustment for that opening balance; and
  - (d) the amount of club transfer earned pension (if any) for the last active scheme year.
- (3) The amount of accrued additional pension is—
  - (a) the sum of the following amounts specified in the additional pension account as at the end of the last day of pensionable service—
    - (i) the opening balance of additional pension for the last active scheme year; and
    - (ii) the AP index adjustment (if any) for that opening balance; or
  - (b) an amount determined by the scheme manager under regulation 56.

#### **Calculation of amount of accrued pension for purpose of partial retirement**

- 29.**—(1) For the purpose of a partial retirement pension, the amount of accrued pension is the sum of—
- (a) the amount of accrued earned pension under sub-paragraph (2); and
  - (b) if a member claims payment of additional pension under regulation 85(2)(c), the amount of accrued additional pension under sub-paragraph (3).
- (2) The amount of accrued earned pension is the partial retirement proportion of the sum of the following amounts specified in the active member's account as at the end of the relevant last day—
- (a) the opening balance of standard earned pension for the relevant year and the index adjustment for that opening balance;
  - (b) the amount of standard earned pension for the relevant year;
  - (c) the opening balance of club transfer earned pension (if any) for the relevant year and the index adjustment for that opening balance; and
  - (d) the amount of club transfer earned pension (if any) for the relevant year.
- (3) The amount of accrued additional pension is—
- (a) the sum of the following amounts specified in the additional pension account as at the end of the relevant last day—
    - (i) the opening balance of additional pension for the relevant year; and
    - (ii) the AP index adjustment (if any) for that opening balance; or
  - (b) an amount determined by the scheme manager under regulation 56.
- (4) The relevant year is the year in which the member makes an election under regulation 84.

#### **Calculation of amount of accrued pension for purposes of deferment**

- 30.**—(1) For the purpose of a deferred member's account, the amount of accrued earned pension is the sum of the following amounts specified in the active member's account as at the end of the last day of pensionable service—

*Status: This is the original version (as it was originally made).*

- (a) the opening balance of standard earned pension for the last active scheme year and the index adjustment for that opening balance;
- (b) the amount of standard earned pension (if any) for the last active scheme year;
- (c) the opening balance of club transfer earned pension (if any) for the last active scheme year and the index adjustment for that opening balance; and
- (d) the amount of club transfer earned pension (if any) for the last active scheme year.

## SCHEDULE 10

Regulation 27(1)

### Practitioner Income

#### Interpretation

##### 1. In this Schedule—

“Board and advisory work” means—

- (a) work undertaken as a member of the Board of an employing authority which is not a GMS practice, a PMS 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, NHS services or associated management activities or similar duties,

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

“collaborative services” means primary medical services provided by a medical practitioner, a GMS practice, a PMS practice, an APMS contractor or an OOH provider under or as a result of an arrangement between—

- (a) the National Assembly for Wales, the National Health Service Commissioning Board, a Clinical Commissioning Group or a Local Health Board; and
- (b) a local authority,

under, in relation to England, section 80(6A) of the 2006 Act<sup>(114)</sup> or, in relation to Wales, section 38(6) of the 2006 Wales Act<sup>(115)</sup> under which the National Assembly, National Health Service Commissioning Board, Commissioning group or Local Health Board is responsible for providing services for purposes related to the provision of health care;

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

- (a) a medical practitioner, a GMS practice, a PMS practice, an APMS contractor or an OOH provider; and
- (b) one of the following bodies—
  - (i) a Special Health Authority, which relates to the provision of health care;
  - (ii) the National Assembly for Wales, the National Health Service Commissioning Board or a Local Health Board under, in the case of England section 12ZA of the 2006 Act<sup>(116)</sup> or, in the case of Wales, section 10 of the 2006 (Wales) Act<sup>(117)</sup>

<sup>(114)</sup> Section 80(6A) was inserted by section 55(1) of, and paragraph 28(1) and (8) of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

<sup>(115)</sup> Section 38(6) has been amended by section 297 of, and paragraphs 12 and 24(1) and (3) of Schedule 21 to, the Health and Social Care Act 2012.

<sup>(116)</sup> Section 12ZA was inserted by section 55(1) of, and paragraph 9 of Schedule 4 to, the Health and Social Care Act 2012.

(which relates to arrangements made with any person or body including a voluntary one, for the provision of services under the Act);

- (iii) a National Health Service trust under paragraph 18 of Schedule 4 to the 2006 Act(**118**) or paragraph 18 of Schedule 3 to the 2006 (Wales) Act(**119**);
- (iv) a National Health Service foundation trust under section 47(2)(b) of the 2006 Act which is for the purposes of the health service;
- (v) a local authority acting under section 2B of the 2006 Act(**120**);

“local authority” means—

- (a) a body listed in section 1 of the Local Authority Social Services Act 1970(**121**); or
- (b) the Council of the Isles of Scilly;

“NHS standard contract” means the terms and conditions from time to time drafted by the National Health Service Commissioning Board pursuant to regulation 17 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standard Rules) Regulations 2012(**122**).

## Medical practitioner

2.—(1) This paragraph applies if a member (M)—

- (a) is a medical practitioner or a non-GP provider; and
- (b) is not in receipt of salary, wages, fees or other regular payments in respect of M’s employment by virtue of the application of these regulations to M as mentioned in column 3 of the Table in regulation 27(1).

(2) M’s practitioner income is—

- (a) the sum of the amounts described in Cases 1 to 5; minus
- (b) an amount on account of practice expenses.

### CASE 1

Income derived by M from each of the following—

- (a) a GMS contract;
- (b) a PMS agreement;
- (c) an APMS contract;
- (d) payments from, or to, a practitioner who is a GMS practice, a PMS practice or an APMS contractor in respect of the performance of—
  - (i) certification services;
  - (ii) commissioned services; or
  - (iii) collaborative services;
- (e) engagement by the National Health Service Commissioning Board or a Local Health Board to assist in the provision of primary medical services under—

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(117) Section 10 has been amended by section 297 of, and paragraphs 12 and 15 of Schedule 21 to, the Health and Social Care Act 2012.

(118) Paragraph 18 of Schedule 4 has been amended by section 55(1) of, and paragraph 22(1) and (8) of Schedule 4 to, the Health and Social Care Act 2012.

(119) Paragraph 18 of Schedule 3 has been amended by section 297 of, and paragraphs 12 and 40(1) and (7) of Schedule 21 to, the Health and Social Care Act 2012.

(120) Section 2B was inserted by section 12 of the Health and Social Care Act 2012.

(121) 1970 c.42. Section 1 has been amended by section 195(1) and (3) of the Local Government Act 1972 (c.70) and section 22(4) of, and paragraph 7 of Schedule 10 to, the Local Government (Wales) Act 1994 (c.19).

(122) S.I. 2012/2996.

*Status: This is the original version (as it was originally made).*

- (i) in the case of England, section 83(2) of the 2006 Act<sup>(123)</sup>; or
- (ii) in the case of Wales, section 41(2) of the 2006 (Wales) Act;
- (f) the provision of locum services;
- (g) payments made to M by an OOH provider or other employing authority providing OOH services in respect of the performance of—
  - (i) primary medical services;
  - (ii) commissioned services;
  - (iii) collaborative services;
  - (iv) NHS 111 services; or
  - (v) certification services.
- (h) payments made to M by an employing authority in respect of M's provision of—
  - (i) primary dental services;
  - (ii) general ophthalmic services;
  - (iii) pharmaceutical services;
  - (iv) dispensing services;
- (i) practice-based work carried out in educating or training or organising the education or training of, medical students or practitioners;
- (j) sums paid in respect of the provision of primary medical services where M is engaged by a Clinical Commissioning Group to assist in the provision of the services;
- (k) sums paid in respect of the provision of services under an NHS standard contract;
- (l) sums paid in respect of a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the scheme manager agrees to treat as a qualifying contract for these purposes.

#### CASE 2

Charges collected from patients in respect of services mentioned in Case 1 sub-paragraph (d) which M is authorised by or under an enactment to retain.

This does not include charges authorised by regulations made—

- (a) in relation to England, under section 185(1) of the 2006 Act;
- (b) in relation to Wales, under 133(1) of the 2006 (Wales) Act.

#### CASE 3

Sums paid to M out of a fund determined by reference to the number of beds in a hospital.

#### CASE 4

Allowances and other sums paid in respect of Board and advisory work.

This does not include payments made to cover expenses.

#### CASE 5

Payments in respect of health-related functions exercised under section 75 of the 2006 Act.

### **Dental practitioner**

- 3.—(1)** This paragraph applies if a member (M) is a dental practitioner.

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<sup>(123)</sup>Section 83(2) was substituted by section 55(1) of, and paragraph 30(1) and (2) of Schedule 4 to, the Health and Social Care Act 2012 (c. 7).



(2) M's practitioner income for a scheme year is found by applying the following formula—

$$((GPI - BP) \times SSP + NRBP) - NMI$$

where—

GPI is the income derived from a GDS contract or PDS agreement—

- (i) including charges collected from patients which are required to be set off against payments under the contract or agreement by virtue of directions given—
  - (aa) in relation to England, under section 94, 103 or 109 of the 2006 Act(124); or
  - (bb) in relation to Wales, under section 52, 60 or 66 of the 2006 (Wales) Act(125); but
- (ii) not including—
  - (aa) charges collected from patients which are not required to be so set off;
  - (bb) income received by a practitioner to whom regulation 19 or paragraph 1 of Schedule 4 applies;
  - (cc) income received by M in respect of the performance of services under a GDS contract or a PDS agreement to which M's employer is not a party;

BP is the value of the following payments made in the scheme year by the National Health Service Commissioning Board or a Local Health Board where the Board is a party to the contract or agreement—

- (i) monthly seniority payments;
- (ii) adoption leave, maternity leave, parental leave or paternity leave payments;
- (iii) sickness leave payments;
- (iv) reimbursement of the salary of a foundation trainee;
- (v) reimbursement of the national insurance contributions of a foundation trainee;
- (vi) reimbursement of non-domestic rates;

SSP is the average percentage (as determined by the Secretary of State) of dental practitioner values accounted for by practice expenses;

NRBP is the value of the following payments made in the scheme year by the National Health Service Commissioning Board or a Local Health Board where the Board is a party to the contract or agreement—

- (i) monthly seniority payments;
- (ii) adoption leave, maternity leave, parental leave or paternity leave payments;
- (iii) sickness leave payments;

NMI is the amount of payments made to a dental practitioner who—

- (i) performs services for the practice for the purposes of the contract or agreement; and
- (ii) in relation to the performance of the services, does not belong to any of groups A to C in regulation 27(1).

(3) The pensionable earnings ceiling in relation to the contract or agreement is amount found by applying the formula—

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(124) Section 94 has been amended by sections 28(2) and 55(1) of, and paragraph 38(1) to (4) of Schedule 4 to, Health and Social Care Act 2012 and by section 17(5) of, and paragraph 52(1)(b) and (2) of Schedule 9 to, the Crime and Courts Act 2013 (c.22). Section 103 has been amended by section 55(1) of, and paragraph 45 of Schedule 4 to, Health and Social Care Act 2012. Section 109 has been amended by section 55(1) of, and paragraph 50 of Schedule 4 to, Health and Social Care Act 2012 and by section 17(5) of, and paragraph 52(1)(b) and (2) of Schedule 9 to, the Crime and Courts Act 2013.

(125) Sections 52 and 66 have been amended by section 17(5) of, and paragraph 52(1)(b) and (2) of Schedule 9 to, the Crime and Courts Act 2013.

*Status: This is the original version (as it was originally made).*

$$(GPI - BP) \times SSP$$

where GPI, BP and SSP have the same meaning as in sub-paragraph (2).

(4) Income received by M in consequence of M belonging to any of groups A to C in regulation 27(1) is practitioner income, but is not subject to the pensionable earning ceiling.

(5) Sub-paragraph (6) applies if M is in concurrent employment in any of the following capacities—

- (a) by being employed or engaged as mentioned in any of groups A to C in that regulation;
- (b) with a local authority or university;
- (c) as a civil servant;
- (d) in any other employment that the Secretary of State in any particular case allows.

(6) Practitioner income does not include any amounts for which M is required to account to the employer as a term or condition of the employment.

#### **Allocation of practice income**

4.—(1) Sub-paragraph (2) applies if a member—

- (a) is a medical practitioner or a non-GP provider; and
- (b) is in partnership with one or more medical practitioners.

(2) The pensionable earnings of each partner in the partnership are calculated—

- (a) by aggregating the pensionable earnings of each partner; and
- (b) by dividing the total equally by the number of partners.

(3) Sub-paragraph (2)(a) includes an amount that would constitute pensionable earnings of a partner who is not a member of this scheme.

(4) If the partners do not share equally in the partnership profits, they may elect that each partner's pensionable earnings must correspond to each partner's share of the partnership profits.

#### **Partners' NHS employment earnings**

5.—(1) This paragraph applies if a medical practitioner (M) practising in a partnership also has earnings in respect of NHS employment other than as a partner in the partnership (NHS earnings).

(2) The partners may elect that—

- (a) M's pensionable earnings, as determined in accordance with paragraph 4, must be reduced by the amount of M's NHS earnings; and
- (b) the pensionable earnings of each of them (including M) are increased in proportion to their respective share of the partnership profits.

#### **Paragraph 4 and 5 election and calculation**

6.—(1) This paragraph applies to an election as mentioned in paragraph 4(4) or 5(2).

(2) The partners must exercise the election by giving notice in writing to their host Board in accordance with sub-paragraph (3).

(3) A notice under this sub-paragraph must—

- (a) be signed by all of the partners;
- (b) state as a fraction each partner's share in the partnership profits; and

- (c) state the name of the host Board on whose list every practitioner in the partnership is included.
- (4) A notice relating to an election under paragraph 5(2) must also in respect of every partner who is in NHS employment—
  - (a) state the name of the employing authority;
  - (b) state the pensionable earnings received in respect of the employment;
  - (c) include an undertaking to give the host Board notice in writing at the end of each scheme year of the pensionable earnings received in respect of the employment in the scheme year.
- (5) A notice under this paragraph takes effect—
  - (a) on the date agreed between the partners and the host Board, or
  - (b) failing such agreement, on the date specified by the Secretary of State.
- (6) A notice under this paragraph—
  - (a) may be cancelled or amended by a subsequent such notice;
  - (b) continues in effect until cancelled or, if earlier, there is a change in the partnership.
- (7) Calculations for the purposes of paragraphs 4(2) and 5(2) must be carried out by the host Board.

### **Locum practitioner**

- 7.—(1) This paragraph applies if a member is a locum medical practitioner.
- (2) The member's practitioner income is—
    - (a) all fees and other payments made to the member in respect of the provision of locum services (excluding payments made to cover expenses or for overtime); minus
    - (b) such expenses as are deductible in accordance with guidance laid down by the Secretary of State.
  - (3) In this paragraph, references to the provision of locum services, in relation to a practitioner, are to Board and advisory work performed for the National Health Service Commissioning Board or a Local Health Board, and—
    - (a) primary medical services;
    - (b) commissioned services;
    - (c) collaborative services;
    - (d) health-related functions exercised under section 75 of the 2006 Act;
    - (e) pharmaceutical services;
    - (f) dispensing services;
    - (g) NHS 111 services;
    - (h) services performed for a GMS practice, PMS practice or APMS contractor pursuant to the NHS standard contract or a contract entered into by a local authority pursuant to its functions under the 2006 Act relating to the improvement and protection of public health and which the Secretary of State agrees to treat as a qualifying contract for these purposes;
    - (i) 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.

SCHEDULE 11

Regulation 30

Determination of pensionable earnings: setting contribution rates

**Introduction**

1. For the purposes of this Schedule—

- (a) “previous scheme year” means the scheme year immediately preceding the scheme year in respect of which contributions are payable in accordance with this scheme (“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 2 to 4 apply to each such employment separately; and
  - (ii) each such employment is treated separately for the purpose of paying contributions.

**Continuous employment spanning two scheme years**

2.—(1) Sub-paragraph (2) applies for the purposes of determining the relevant contribution rate for the current scheme year for a member (M) who is in pensionable employment with the same employing authority on both—

- (a) the last day of the previous scheme year; and
- (b) the first day of the current scheme year.

(2) Where M is within column 1 of one of the following cases, M must pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (3) of regulation 30 in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the amount determined as mentioned in column 2 relating to that case.

<i>Column 1</i>	<i>Column 2</i>
<p><b>CASE 1</b> M—</p> <ul style="list-style-type: none"> <li>(a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year; and</li> <li>(b) paid contributions in respect of that employment at the same percentage rate throughout that year.</li> </ul>	<p>The amount of M’s pensionable earnings received during the previous scheme year.</p>
<p><b>CASE 2</b> M—</p> <ul style="list-style-type: none"> <li>(a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;</li> <li>(b) paid contributions in respect of that employment at the same percentage rate throughout that year.</li> </ul>	<p>The amount of M’s pensionable earnings determined by reference to the amount the scheme manager determines would have been paid in respect of a single comparable whole-time employment during the previous scheme year.</p>
<p><b>CASE 3</b> M—</p> <ul style="list-style-type: none"> <li>(a) was in pensionable employment with an employing authority on a combination</li> </ul>	<p>The amount which is the aggregate of—</p> <ul style="list-style-type: none"> <li>(a) M’s pensionable earnings received during the previous scheme year in respect of M’s whole-time employment; and</li> </ul>

<i>Column 1</i>	<i>Column 2</i>
<p>of a whole-time and part-time basis throughout the previous scheme year;</p> <p>(b) paid contributions in respect of that employment at the same percentage rate throughout that year.</p> <p><b>CASE 4</b> M—</p> <p>(a) was in pensionable employment with an employing authority on a whole-time basis throughout the previous scheme year;</p> <p>(b) did not pay contributions in respect of that employment at the same percentage rate throughout that year.</p> <p>where—</p> <p>RPE is the pensionable earnings received in respect of M's employment for the period—</p> <p>(i) starting on the date M's contribution rate last changed in the previous scheme year; and</p> <p>(ii) ending on the last day of that year; and</p> <p>NDPE is the number of days of pensionable employment with the employing authority—</p> <p>(i) starting on the date M's contribution rate last changed in that year; and</p> <p>(ii) ending on the last day of that year.</p> <p><b>CASE 5</b> M—</p> <p>(a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;</p> <p>(b) did not pay contributions in respect of that employment at the same percentage rate throughout that year.</p> <p>where—</p> <p>CWTE is the amount the scheme manager determines would have been paid in respect of a single comparable whole-time employment in respect of M's part-time employment with the authority for the period—</p> <p>(i) starting on the date M's contribution rate last changed in the previous scheme year; and</p> <p>(ii) ending on the last day of that year; and</p> <p>NDPE is the number of days of pensionable employment with the employing authority—</p> <p>(i) starting on the date M's contribution rate last changed in that year; and</p> <p>(ii) ending on the last day of that year.</p> <p><b>CASE 6</b> M—</p> <p>(a) was in pensionable employment with an employing authority on a combination of a whole-time and a part-time basis throughout the previous scheme year;</p>	<p>(b) the amount the scheme manager determines would have been paid in respect of a single comparable whole-time employment for that period in respect of M's part-time employment</p> <p>The amount of M's pensionable earnings determined by the formula—</p> $\frac{RPE}{NDPE} \times 365$ <p>The amount of M's pensionable earnings determined by the formula—</p> $\frac{CWTE}{NDPE} \times 365$ <p>The amount of M's pensionable earnings determined by the formula—</p> $\frac{RPE + CWTE}{NDPE} \times 365$

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<i>Column 1</i>	<i>Column 2</i>
<p>(b) did not pay contributions in respect of that employment at the same percentage rate throughout that year.</p> <p>where—</p> <p>RPE is the pensionable earnings received for the whole-time employment with the authority for the period—</p> <p>(i) starting on the date M’s contribution rate last changed in the previous scheme year; and</p> <p>(ii) ending on the last day of that year;</p> <p>CWTE is the amount the scheme manager determines would have been paid in respect of a single comparable whole-time employment in respect of M’s part-time employment with the authority for the period—</p> <p>(i) starting on the date M’s contribution rate last changed in the previous scheme year; and</p> <p>(ii) ending on the last day of that year; and</p> <p>NDPE is the number of days of pensionable employment with the authority for the period—</p> <p>(i) starting on the date M’s contribution rate last changed in that year; and</p> <p>(ii) ending on the last day of that year.</p>	<p>The amount of M’s pensionable earnings determined by the formula—</p> $\frac{RPE}{NDPE} \times 365$
<p><b>CASE 7</b></p> <p>M—</p> <p>(a) started pensionable employment with an employing authority on a whole-time basis during the previous scheme year;</p> <p>(b) paid contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.</p> <p>where—</p> <p>RPE is the pensionable earnings received in respect of the employment during the previous scheme year; and</p> <p>NDPE is the number of days of pensionable employment with the authority during that year.</p>	<p>The amount of M’s pensionable earnings determined by the formula—</p> $\frac{CWTE}{NDPE} \times 365$
<p><b>CASE 8</b></p> <p>M—</p> <p>(a) started pensionable employment with an employing authority on a part-time basis during the previous scheme year;</p> <p>(b) paid contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.</p> <p>where—</p> <p>CWTE is the amount the scheme manager determines would have been paid for the employment during the previous scheme year in respect of a single comparable whole-time employment; and</p> <p>NDPE is the number of days of pensionable employment with the authority during that year.</p>	<p>The amount of M’s pensionable earnings determined by the formula—</p> $\frac{CWTE}{NDPE} \times 365$

<i>Column 1</i>	<i>Column 2</i>
<p><b>CASE 9</b> M—</p> <p>(a) started pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and a part-time basis;</p> <p>(b) paid contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.</p> <p>where—</p> <p>RPE is the pensionable earnings received for the whole-time employment with the authority during the previous scheme year;</p> <p>CWTE is the amount the scheme manager determines would have been paid in respect of a single comparable whole-time employment in respect of M’s part-time employment with the authority during that year; and</p> <p>NDPE is the number of days of pensionable employment with the authority during that year.</p>	<p>The amount of M’s pensionable earnings determined by the formula—</p> $\frac{RPE + CWTE}{NDPE} \times 365$
<p><b>CASE 10</b> M—</p> <p>(a) started pensionable employment with an employing authority on a whole-time basis during the previous scheme year;</p> <p>(b) did not pay contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.</p> <p>where—</p> <p>RPE is the pensionable earnings received for the whole-time employment with the authority for the period—</p> <p>(i) starting on the date M’s contribution rate last changed in the previous scheme year; and</p> <p>(ii) ending on the last day of that year; and</p> <p>NDPE is the number of days of pensionable employment with the authority—</p> <p>(i) starting on the date M’s contribution rate last changed in that year; and</p> <p>(ii) ending on the last day of that year.</p>	<p>The amount of M’s pensionable earnings determined by the formula—</p> $\frac{RPE}{NDPE} \times 365$
<p><b>CASE 11</b> M—</p> <p>(a) started pensionable employment with an employing authority on a part-time basis during the previous scheme year;</p> <p>(b) did not pay contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.</p> <p>where—</p>	<p>The amount of M’s pensionable earnings determined by the formula—</p> $\frac{CWTE}{NDPE} \times 365$

*Status: This is the original version (as it was originally made).*

<i>Column 1</i>	<i>Column 2</i>
<p>CWTE is the amount the scheme manager determines would have been paid in respect of a single comparable whole-time employment in respect of M’s part-time employment with the authority for the period—</p> <ul style="list-style-type: none"> <li>(i) starting on the date M’s contribution rate last changed in the previous scheme year; and</li> <li>(ii) ending on the last day of that year; and</li> </ul> <p>NDPE is the number of days of pensionable employment with the authority—</p> <ul style="list-style-type: none"> <li>(i) starting on the date M’s contribution rate last changed in that year; and</li> <li>(ii) ending on the last day of that year.</li> </ul> <p><b>CASE 12</b></p> <p>M—</p> <ul style="list-style-type: none"> <li>(a) started pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and a part-time basis with the authority;</li> <li>(b) did not pay contributions in respect of that employment at the same percentage rate from the date the employment started to the last day of that year.</li> </ul> <p>where—</p> <p>RPE is the pensionable earnings received for the whole-time employment with the authority for the period—</p> <ul style="list-style-type: none"> <li>(i) starting on the date M’s contribution rate last changed in the previous scheme year; and</li> <li>(ii) ending on the last day of that year;</li> </ul> <p>CWTE is the amount the scheme manager determines would have been paid in respect of a single comparable whole-time employment in respect of M’s part-time employment with the authority for the period—</p> <ul style="list-style-type: none"> <li>(i) starting on the date M’s contribution rate last changed in the previous scheme year; and</li> <li>(ii) ending on the last day of that year; and</li> </ul> <p>NDPE is the number of days of pensionable employment with the authority for the period—</p> <ul style="list-style-type: none"> <li>(i) starting on the date M’s contribution rate last changed in that year; and</li> <li>(ii) ending on the last day of that year.</li> </ul>	<p>The amount of M’s pensionable earnings determined by the formula—</p> $\frac{RPE + CWTE}{NDPE} \times 365$
<ul style="list-style-type: none"> <li>(3) If M does not fall within any of the cases in sub-paragraph (2)— <ul style="list-style-type: none"> <li>(a) the scheme manager must determine the amount of M’s pensionable earnings; and</li> <li>(b) M must pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (3) of regulation 30 in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the amount so determined.</li> </ul> </li> <li>(4) For the purposes of sub-paragraph (3)(a), the scheme manager must take the advice of the scheme actuary and have regard to— <ul style="list-style-type: none"> <li>(a) pensionable earnings attributable to pensionable service comparable to M’s;</li> <li>(b) prevailing pay scales;</li> <li>(c) prevailing rates of pensionable allowances.</li> </ul> </li> </ul>	



(5) A member is regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer, but did not make contributions to this scheme.

(6) For the purposes of calculating the member's pensionable earnings—

- (a) contributions for any period referred to in sub-paragraph (2) are deemed to have been paid;
- (b) additional pensionable earnings that the member is treated as having received during an absence from work (see regulation 28) is included.

(7) The amount of pensionable earnings determined in accordance with this paragraph must be rounded down to the nearest whole pound.

### **Change to employment or rate of pensionable earnings or allowances**

3.—(1) If, at any time during the current scheme year, a member starts a new employment, the member must pay contributions in respect of the employment at the rate specified in column 2 of the table in paragraph (3) of regulation 30 in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the member's pensionable earnings determined in accordance with sub-paragraph (5).

(2) If at any time during the current scheme year, a change is made to a member's annual rate of pensionable earnings or pensionable allowances in respect of an existing employment, the member must pay contributions—

- (a) from the first day of the next pay period immediately following the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (3) of regulation 30 in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the member's pensionable earnings determined in accordance with sub-paragraph (5); and
- (b) as if the member's employment had started on that date.

(3) Sub-paragraph (2) 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 the member's employer to have been made in respect of—

- (a) unplanned changes to the member's duties; or
- (b) changes to the member's duties that are unlikely to last for more than 12 months.

(4) If the change to a member's pensionable earnings mentioned in sub-paragraph (2) is made in respect of an existing part-time employment, that sub-paragraph does not apply unless there is a corresponding change to the amount of pensionable earnings that would be paid to the member in respect of a whole-time comparable employment.

(5) Where sub-paragraph (1) or (2) applies the scheme manager must determine the member's pensionable earnings—

(a) if the employment is whole-time, by applying the formula—

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

(b) if the employment is part-time, by applying the formula—

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

where, for the purposes of this sub-paragraph—

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EPE is the pensionable earnings that the member's employing authority estimates will be payable to the member in respect of the employment mentioned in that sub-paragraph during the current scheme year;

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

NDPE is the number of days of pensionable employment from the date the employment starts to the end of that year.

- (6) Sub-paragraph (7) applies if—
- (a) sub-paragraph (1) applies to a member; and
  - (b) at the time the member becomes an active member in an employment falling within group A, B or C in regulation 27(1), it is apparent that the member's pensionable earnings in the employment includes a variable amount.
- (7) The variable amount mentioned in sub-paragraph (6)—
- (a) is to be taken as such amount as the employing authority considers appropriate for the current scheme year; and
  - (b) in the case of a member who works part-time, is the variable amount that would be paid in respect of comparable whole-time employment.

#### **Small payments: changed circumstances**

4.—(1) This regulation applies if a payment not exceeding £150 is made to a member in respect of work undertaken by the member—

- (a) during an earlier scheme year;
- (b) during a period before the percentage rate at which contributions are due from the member changed by virtue of paragraph 3; or
- (c) in part during the scheme year referred to in paragraph (a) and in part during the scheme year to which paragraph (b) applies.

(2) If the member is in pensionable employment with the employing authority making the payment on the day it is made, for all purposes of this scheme—

- (a) the payment must be made to the member as if it has been made in respect of work undertaken in the current scheme year; and
- (b) contributions are payable in respect of the payment at the rate applicable to the member on the day the payment is made.

(3) If the member is not in pensionable employment with the employing authority making the payment on the day it is made, for all purposes of this scheme—

- (a) the payment must be treated as if it has been made to the member in respect of work undertaken in the scheme year in which the member's pensionable employment with the employing authority ceased; and
- (b) contributions are payable in respect of the payment at the rate applicable to the member on the day the employment ceased.

#### **Payments for unsocial hours**

5.—(1) This regulation applies if, during the current scheme year—

- (a) a payment is made to a member that is determined by the member's employing authority to have been made in respect of work done during unsocial hours; and

- (b) the payment is made in respect of work done by the member during a period falling within the 2 calendar months immediately preceding the calendar month in which the payment is made.
- (2) If, on the day the payment is made, the member is in pensionable employment with the employing authority which made the payment, for all purposes of this scheme—
  - (a) the payment must be treated as if it has been made to the member in respect of work undertaken by the member in the current scheme year; and
  - (b) contributions are payable in respect of the payment at the rate applicable to the member on the day the payment is made.
- (3) If, on the day the payment is made, the member is not in pensionable employment with the employing authority which made the payment, for all purposes of this scheme—
  - (a) the payment must be treated as if it has been made to the member in respect of work undertaken by the member in the current scheme year; and
  - (b) contributions are payable in respect of the payment at the rate applicable to the member on the day the member's pensionable employment with the authority ceased as determined in accordance with this Schedule.

## SCHEDULE 12

Regulation 31

### Practitioner Contribution Payments

## PART 1

### Accounts

#### **Medical practitioners and non-GP providers**

- 1.—(1) This paragraph applies to a member (M) who belongs to group D in regulation 27(1) by virtue of being—
- (a) a medical practitioner; or
  - (b) a non-GP provider.
- (2) In respect of each scheme year M must provide each relevant host Board with a certificate of M's pensionable earnings based on—
- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which M is a member; and
  - (b) the return that M has made to Her Majesty's Revenue and Customs (HMRC) in respect of M's earnings for the year.
- (3) The certificate must be provided before the end of the period of one month starting on the date when the return was required to be submitted to HMRC.

#### **Medical practitioners not members of a practice**

- 2.—(1) This paragraph applies to a member (M) who—
- (a) belongs to any of groups A to C in regulation 27(1) in relation to the provision of services; or

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(b) is a locum practitioner.

(2) In respect of each scheme year, M must provide each relevant host Board with a certificate of M's pensionable earnings based on—

- (a) the payments M receives from employing authorities for practitioner services; and
- (b) the return that M has made to HMRC in respect of M's earnings for the year.

(3) The certificate must be provided before the end of the period of one month starting on the date when the return was required to be submitted to HMRC.

### **Dentists**

3.—(1) Not later than 1 month after the end of each scheme year, a host Board must give to each GDS or PDS contractor with which the host Board is a party to a GDS contract or a PDS agreement, a notice which sets out, in accordance with the Board's records—

- (a) the amount of the pensionable earnings ceiling; and
- (b) the amount of the pensionable earnings the contractor has paid to every dental practitioner who belongs to group D in regulation 27(1) (a group D dentist) who has performed services under the contract or agreement during that year.

(2) A notice under sub-paragraph (1) is referred to as an annual reconciliation notice.

(3) Not later than 1 month after the end of each scheme year, a host Board must give to each group D dentist a notice which sets out the amount of pensionable earnings each practitioner has been paid for that scheme year as indicated in the Board's records ("a performer's notice").

(4) Not later than the end of the period of 3 months following the end of each scheme year the GDS or PDS contractor must return the annual reconciliation notice to the host Board stating—

- (a) that the amounts referred to in sub-paragraph (1) are correct or, where either or both of those amounts are incorrectly shown in the notice, the correct figure or figures;
- (b) in the case of a group D dentist whose earnings, during the period covered by the annual reconciliation notice, are not pensionable because they fall within the element BP in the formula in paragraph 3(2) of Schedule 10, the earnings that would otherwise have been pensionable if that formula did not apply;
- (c) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments paid under the contract or agreement during the scheme year;
- (d) whether each group D dentist who performed services under the contract or agreement referred to in sub-paragraph (1) was given the opportunity to verify the pensionable earnings declared for the dentist in the annual reconciliation notice; and
- (e) the name and dentist's reference number of any group D dentist who—
  - (i) failed to verify; or
  - (ii) disagrees with,

the amounts declared for the dentist in the annual reconciliation notice and, where paragraph (ii) applies, the reason for the disagreement.

(5) Not later than the end of the period of 3 months following the end of each scheme year, each group D dentist who performed services under the contract or agreement referred to in sub-paragraph (1) must return the performers' notice to the host Board, stating—

- (a) that the dentist was (or was not, as the case may be) in pensionable employment for the period covered by the performer's notice;

- (b) that the dentist was (or was not, as the case may be) directly employed by the contractor referred to in sub-paragraph (1) during the period covered by the performer's notice;
  - (c) in the case of a practitioner, who was in pensionable employment during the period covered by the notice, the pensionable earnings the dentist received under the contract or agreement during that period;
  - (d) in the case of a practitioner whose earnings, during the period covered by the performer's notice, fell within the element BP in the formula in paragraph 3(2) of Schedule 10, the earnings that would otherwise have been pensionable if that formula did not apply;
  - (e) the amount of any monthly seniority payments, maternity leave payments, paternity leave payments, adoption leave payments, parental leave payments or sickness leave payments received by the dentist under the contract or agreement during the scheme year; and
  - (f) whether the practitioner and contractor have together verified that any amounts the practitioner has declared in respect of paragraph (c), (d) or (e) above are the same as the equivalent amounts declared in the annual reconciliation notice referred to in sub-paragraph (4).
- (6) Not later than the end of the period of 3 months following the end of each scheme year, a dental practitioner who does not belong to group D must provide the host Board with whom the practitioner's employer has entered into a GDS contract or a PDS agreement, with a notice of the practitioner's pensionable earnings based on—
- (a) the payments the practitioner has received from the practitioner's employer for practitioner services provided under the contract or agreement during that year; and
  - (b) the pensionable earnings the practitioner has received as a dental practitioner during that year by virtue of belonging to group A or B in regulation 27(1).
- (7) The host Board may, in exceptional circumstances, and with the agreement of the scheme manager, arrange or agree a different time limit for the issue and return of the certificates, notices or statements referred to in sub-paragraphs (1) to (6) and may, if a material particular has changed, accept a replacement.
- (8) An annual reconciliation notice is invalid if—
- (a) it contains information that the host Board's records show is inaccurate or misleading in a material particular;
  - (b) it is not received within the specified time limit;
  - (c) the total of the amounts specified in it in respect of each group D dentist that performed services under the contract or agreement referred to in sub-paragraph (1) is greater than the aggregate of the pensionable earnings ceiling referred to in that sub-paragraph and the amount referred to in sub-paragraph (4)(c);
  - (d) it is incomplete in any material particular; or
  - (e) one or more of the practitioners referred to in it did not, for whatever reason, verify the earnings figure the contractor has declared for them.
- (9) Where a host Board has received an annual reconciliation notice which is valid for some or all of the practitioners listed in it, the amounts notified to that employing authority for the scheme year to which the notice relates will, subject to paragraph 10, be the pensionable earnings for those practitioners.
- (10) Where a host Board has received an annual reconciliation notice which is invalid for some or all of the practitioners listed in it, the pensionable earnings for those practitioners for the scheme year to which the notice relates will be—
- (a) zero, where the host Board's records show that value or the authority is unable to estimate the value of the practitioner's pensionable earnings; or

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- (b) the figure that the host Board estimates will represent that practitioner's share of the aggregate of the pensionable earnings ceiling referred to in sub-paragraph (1) and the amount referred to in sub-paragraph (4)(c) ("the maximum amount"), less the difference between—
  - (i) the maximum amount, and
  - (ii) the total of the monthly amounts in respect of which estimated contributions to this scheme under regulation 31 (contributions by members) were paid on account during the scheme year to which the earnings relate.

(11) If the total mentioned in paragraph (ii) of sub-paragraph (10)(b) is greater than the maximum amount, no amount is to be deducted pursuant to sub-paragraph (10).

### **Information to be provided to scheme manager**

4.—(1) In respect of each scheme year, each employing authority and GDS or PDS contractor must provide the scheme manager and host Board with a statement of estimated pensionable earnings in respect of—

- (a) a non-GP provider that is a GMS practice, a PMS practice or an APMS contractor who assists in the provision of NHS services provided by that GMS practice, a PMS practice or an APMS contractor;
- (b) a medical practitioner who performs medical services as, or on behalf of, the practice or contractor;
- (c) a medical practitioner employed by the practice or contractor;
- (d) a dental practitioner who performs services under a GDS contract or a PDS agreement, or
- (e) a dental practitioner employed or engaged to perform services under a GDS contract or a PDS agreement.

(2) In respect of each scheme year, each employing authority and GDS or PDS contractor must, in respect of medical or dental practitioners employed or engaged by the practice or contractor, provide the scheme manager with an end-of-year statement of—

- (a) pensionable earnings;
- (b) contributions to this scheme made under regulation 31 (contributions: practitioners and non-GP providers) and the modifications to that regulation referred to regulations 38 and 39;
- (c) contributions to this scheme made under regulation 33 (contributions by employing authorities); and
- (d) pensionable earnings deemed in accordance with regulation 28 (pensionable earnings: break in service).

(3) The scheme manager and host Board must be provided with—

- (a) the statement referred to in sub-paragraph (1) at least one month before the beginning of the scheme year;
- (b) the statement referred to in sub-paragraph (2) no later than 3 months after the end of the scheme year.

(4) A host Board must, before the end of the period of 13 months after the end of a scheme year, forward to the scheme manager in respect of the scheme year a copy of the records the Board maintains in respect of—

- (a) all contributions to this scheme made under regulation 31 in respect of medical practitioners and non-GP providers; and
- (b) their pensionable earnings.

### **Failure of member to comply with this Schedule**

5.—(1) If, in respect of a scheme year, a practitioner or non-GP provider has failed to comply with the requirements of whichever of paragraphs 1 to 3 applies to the member, the member's pensionable earnings for the scheme year are zero.

This is subject to sub-paragraphs (2) and (3).

(2) 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 the member's pensionable earnings for that year, the scheme manager may treat that figure as the amount of the member's pensionable earnings for the year where—

- (a) the member has failed to comply with the requirements of whichever of paragraphs 1, 2 or 3 applies to the member, and
- (b) a benefit in respect of the member's service as a practitioner or non-GP provider is payable to, or in respect of the member, under these Regulations.

(3) If, in respect of a scheme year, a practitioner or non-GP provider (the member)—

- (a) dies without complying with the requirements of whichever of paragraphs 1, 2 or 3 applies to the member; or
- (b) is, in the opinion of the scheme manager, unable to look after the member's own affairs by reason of illness or lack of capacity within the meaning of the Mental Capacity Act 2005(126),

the scheme manager may require the member's personal representatives or person (or persons) duly authorised to act on the member's behalf to provide the relevant certificate, notice or statement within the period specified in sub-paragraph (4).

(4) The period is—

- (a) that referred to in whichever of paragraph 1, 2 or 3 was or is applicable to the member; or
- (b) such other period as the scheme manager permits.

### **Certificates, notices and statements**

6. The certificates, notices and statements referred to in this Schedule—

- (a) must be in such form as the scheme manager from time to time requires;
- (b) may be provided to the scheme manager in such manner as the scheme manager from time to time permits.

## **PART 2**

### **Payment arrangements**

#### **Medical practitioners and non-GP providers**

7.—(1) Where a medical practitioner or a non-GP provider (the member) is engaged under a contract of service or for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, the authority must—

- (a) deduct contributions payable under regulation 30 or 31 (as the case may be) from any pensionable earnings it pays to the member; and
- (b) where it is not also the host Board, pay those contributions to that Board.

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- (2) Subject to sub-paragraph (7), where a medical practitioner or a non-GP provider is—
- (a) an employing authority which is a GMS practice, a PMS practice or an APMS contractor;  
or
  - (b) a shareholder or partner in such an employing authority,
- the employing authority must pay contributions under regulation 33 to the host Board.
- (3) Where a medical practitioner or a non-GP provider is a shareholder or partner in more than one employing authority referred to in sub-paragraph (2)—
- (a) in the case of a medical practitioner, each such employing authority must pay contributions under regulation 33 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;
  - (b) in the case of a non-GP provider, the employing authority to which regulation 27(3)(b) applies must pay contributions under regulation 33 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.
- (4) Where sub-paragraph (1) applies (but sub-paragraph (2) does not) and the employing authority referred to in sub-paragraph (1)—
- (a) is not the host Board, the authority must pay contributions under regulation 33 to the host Board;
  - (b) is the host Board, that Board must pay contributions under regulation 33 to the Scheme manager in respect of any pensionable earnings it pays to the scheme manager.
- (5) Where a practitioner (other than a locum practitioner) is engaged under a contract of service or for services by an employing authority, that authority must—
- (a) deduct contributions under regulation 31 from any pensionable earnings it pays to the practitioner; and
  - (b) in the case of a medical practitioner who belongs to group A or B in regulation 27(1), where it is not also the host Board, pay those contributions to that Board.
- (6) Where sub-paragraph (5) applies, if the employing authority—
- (a) is not the host Board, the authority must pay contributions under regulation 33 to the host Board;
  - (b) is the host Board, the Board must pay contributions payable under regulation 33 or deducted under regulation 30(5) or 31(7) to the scheme manager in respect of any pensionable earnings it pays to the practitioner.
- (7) A locum practitioner must pay to the host Board—
- (a) contributions under regulation 31; and
  - (b) an amount equal to payments received from the employing authority in respect of its contributions under regulation 33.
- (8) Sub-paragraph (9) applies where, as regards a medical practitioner, an employing authority—
- (a) is not the host Board, and it is a function of the 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 sub-paragraph (1) or (5),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 sub-paragraph (1) or (5) and is liable to pay contributions under regulation 33 in respect of any pensionable earnings it pays to a practitioner.
- (9) It is a function of the host Board to maintain a record of—
  - (a) the matters referred to in sub-paragraph (8)(a)(i) and (ii);
  - (b) contributions paid to it by a medical practitioner; and
  - (c) contributions paid to it by a locum practitioner.
- (10) It is a function of the host Board to pay the contributions—
  - (a) paid to it by a medical practitioner or locum practitioner;
  - (b) paid to it by another employing authority; and
  - (c) it is liable to pay by virtue of sub-paragraphs (4)(b) and (6)(b),

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

## **Dentists**

**8.—(1)** A dental practitioner who belongs to group D for the purposes of regulation 27(1) must pay contributions under regulation 31 in respect of pensionable earnings that relate to a particular GDS contract or PDS agreement to the employing authority that is a party to that GDS contract or PDS agreement.

(2) The host Board must pay the contributions under regulation 33 that are payable in respect of the pensionable earnings mentioned in sub-paragraph (1).

- (3) In the case of a dental practitioner who is a foundation trainee—
  - (a) the GDS or PDS contractor that employs the practitioner must deduct contributions under regulation 30 from any pensionable earnings the contractor pays to the practitioner and must pay the contributions to the employing authority that is a party to the contractor's GDS contract or PDS agreement;
  - (b) the host Board must pay the contributions under regulation 33 that are payable in respect of the pensionable earnings.
- (4) In the case of a dental practitioner who—
  - (a) does not fall within sub-paragraph (1); and
  - (b) is not a foundation trainee,

the employing authority with which the practitioner has a contract for services from which the practitioner's pensionable earnings are derived must pay the contributions under regulation 33 that are payable in respect of the pensionable earnings.

(5) Contributions under regulation 30 or 31 that are required to be paid to a host Board by or in respect of a dental practitioner in accordance with this paragraph must be paid to the Board not later than—

- (a) the 7th day of the month following the month to which the earnings relate, or
- (b) if the contributions are in respect of earnings derived from a PDS agreement and the monthly payment date in respect of that agreement is not the first working day of the month following the month to which the earnings relate, the 7th day after the date on which the earnings to which the contributions relate were paid.

- (6) Sub-paragraph (7) applies to a host Board—
  - (a) to which contributions under regulation 30 or 31 are paid in respect of a dental practitioner in accordance with this paragraph;

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- (b) which is liable to pay contributions under regulation 33 in respect of a dental practitioner.
- (7) The host Board must forward or pay the contributions to the scheme manager not later than the 12th day after the date on which, by virtue of sub-paragraph (5), it is due—
  - (a) to receive the contributions under regulation 30 or 31, or
  - (b) in the case of contributions under regulation 33, the related contributions under regulation 30 or 31.

### **Payment of contributions to host Board**

9. Contributions which are required to be paid to the host Board in accordance with this Schedule must be paid to the Board not later than the 7th day of the month following the month in which the earnings were paid.

### **Recovery of unpaid contributions**

- 10.—(1) Sub-paragraph (2) applies where, despite this Schedule—
- (a) a practitioner, locum practitioner or non-GP provider has failed to pay contributions under regulation 30 or 31;
  - (b) a practitioner or non-GP provider has failed to pay contributions under regulation 33; or
  - (c) an employing authority has failed to deduct contributions under regulation 30.
- (2) The scheme manager may recover the amount of any unpaid contributions—
- (a) where an employing authority has ceased to exist and paragraph (a) of sub-paragraph (1) applies, by adding the amount of those unpaid contributions to the amount of contributions under regulation 30 or 31 the practitioner or non-GP provider in question is due to pay to the host Board; or
  - (b) by deduction from any payment of a benefit to, or in respect of, the member entitled to that benefit: such a deduction must be to the member's advantage and is subject to the member's consent.
- (3) If sub-paragraph (2)(a) applies, the practitioner or non-GP provider must record the amount of the unpaid contributions in a certificate referred to in Part 1 of this Schedule.
- (4) This paragraph does not affect any other method of recovery the scheme manager may have.

## SCHEDULE 13

Regulation 74

### Calculation of pension

## PART 1

### Age retirement pension

#### **Annual rate of age retirement pension**

- 1.—(1) The annual rate of age retirement pension payable to the member (M) is found by—
- (a) taking the amount of full retirement earned pension specified in M's pensioner member's account;

- (b) subtracting the conversion amount (if any) specified in that account in relation to that amount;
  - (c) subtracting the allocation amount (if any) specified in that account in relation to that amount;
  - (d) adding the amount of full retirement additional pension (if any) specified in that account;
  - (e) subtracting the conversion amount (if any) specified in that account in relation to that amount; and
  - (f) adding the amount of late payment actuarial increase (if any) calculated in accordance with paragraph 2.
- (2) In calculating the pension under this paragraph the scheme manager must take account of—
- (a) any buy-out election under Chapter 3 of Part 4;
  - (b) the scheme years that fall within the buy-out period (see regulation 45(6)); and
  - (c) in relation to each such scheme year, the number of years in respect of which the actuarial reduction is bought out.

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

2.—(1) The late payment actuarial increase must be calculated in relation to so much of the amount of pension to which the member would otherwise be entitled under paragraph 1(a) and (d) as is attributable to—

- (a) all of the member's pensionable service; and
- (b) any contributions paid under regulation 60.

(2) The amount of late payment actuarial increase must be calculated in accordance with guidance and tables provided by the scheme actuary to the scheme manager for the purposes of this regulation.

(3) 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 normal pension age before the member becomes entitled to payment of the pension; and
- (b) the life expectancy of the member.

(4) In calculating the amount of actuarial increase under sub-paragraph (2), the scheme manager must take account of—

- (a) any buy-out election under Chapter 3 of Part 4;
- (b) the scheme years that fall within the buy-out period (see regulation 45(6)); and
- (c) in relation to each such scheme year, the number of years in respect of which the actuarial reduction is bought out.

## **PART 2**

### **Conversion of part of pension into lump sum**

#### **Conversion of part of pension**

3.—(1) Subject to sub-paragraphs (2) and (3), an application under regulation 77 must—

- (a) be in writing in such form as the scheme manager may require;
- (b) be made—

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- (i) when the member applies under paragraph 4 of Schedule 3 for payment of the pension; or
- (ii) before such later time as the scheme manager specifies in writing; and
- (c) specify—
  - (i) the amount of the lump sum which the member wishes to receive (which must be a multiple of £12); or
  - (ii) the conversion amount (which must be a whole number of pounds and a multiple of 12).
- (2) If the pension is an ill-health pension under regulation 90 an application under regulation 77 must be made—
  - (a) at the time of claiming that ill-health pension; or
  - (b) before such later time as the scheme manager specifies in writing.
- (3) If the pension is an ill-health pension at Tier 2 paid in substitution for an ill-health pension at Tier 1 by virtue of regulation 93(5), an application under regulation 77—
  - (a) may only be made in relation to the difference between those pensions; and
  - (b) must be made—
    - (i) at the time the member becomes aware of the determination under regulation 93(5); or
    - (ii) before such later time as the scheme manager specifies in writing.
- (4) A member must not exchange pension for a lump sum under regulation 77 to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 (pension schemes etc.) of the 2004 Act (see section 241 of that Act(127)).

### **Member declaration**

- 4.—(1) The scheme manager must not pay a member a lump sum under regulation 77 unless the member declares in writing that, on payment of the lump sum, paragraph 3A of Schedule 29 to the 2004 Act(128) would not apply.
- (2) The declaration must be—
  - (a) signed by the member;
  - (b) in a form specified by the scheme manager; and
  - (c) provided by a date determined by the scheme manager.

### **Protection of guaranteed minimum pension**

- 5. If the member has a guaranteed minimum under section 14 of the 1993 Act(129) in relation to the whole or part of a pension, regulation 77 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 to the scheme manager by the scheme actuary.

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(127) Section 241 has been amended by section 158(1) of, and paragraphs 2 and 9 of Schedule 21 to, the Finance Act 2006 (c.25), section 69 of, and paragraphs 1 and 15 of Schedule 19 to, the Finance Act 2007 (c.11) and section 65 of, and paragraphs 62 and 74 of Schedule 16 to, the Finance Act 2011 (c.11).

(128) Paragraph 3A of Schedule 29 was inserted by section 159 of the Finance Act 2006.

(129) Section 14 has been amended by sections 151 and 177 of, and paragraphs 27(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995 (c.26), section 1(1) of, and paragraph 38(a) to (c) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), section 456 of, and paragraphs 1 and 22(1) and (3) of Schedule 11 to, the Proceeds of Crime Act 2002 (c.29), and is prospectively amended by section 24(1) of, and paragraphs 1 and 15(1) to (3) of Schedule 13 to, the Pensions Act 2014 (c.19).

## PART 3

### Early retirement pension

#### Calculation of amount of early retirement pension

- 6.—(1) The annual rate of early retirement pension payable to the member (M) is found by—
- (a) taking the amount of full retirement earned pension specified in M's pensioner member's account;
  - (b) applying the actuarial reduction (if any) specified in that account in relation to that amount;
  - (c) subtracting the conversion amount (if any) specified in that account in relation to that amount;
  - (d) subtracting the allocation amount (if any) specified in that account in relation to that amount;
  - (e) adding the amount of full retirement additional pension (if any) specified in that account;
  - (f) applying the actuarial reduction (if any) specified in that account in relation to that amount; and
  - (g) subtracting the conversion amount (if any) specified in that account in relation to that amount.
- (2) For the purposes of sub-paragraph (1)(b), the actuarial reduction must take account of—
- (a) any buy-out election under Chapter 3 of Part 4;
  - (b) the scheme years that fall within the buy-out period (see regulation 45(6)); and
  - (c) in relation to each such scheme year, the number of years in respect of which the actuarial reduction is bought out.

## PART 4

### Premature retirement pension

#### Calculation of amount of premature retirement pension

- 7.—(1) The annual rate of premature retirement pension payable to the member (M) is found by—
- (a) taking the amount of full retirement earned pension specified in M's pensioner member's account;
  - (b) applying the actuarial reduction (if any) specified in that account in relation to that amount;
  - (c) subtracting the conversion amount (if any) specified in that account in relation to that amount;
  - (d) subtracting the allocation amount (if any) specified in that account in relation to that amount;
  - (e) adding the amount of full retirement additional pension (if any) specified in that account;
  - (f) applying the actuarial reduction (if any) specified in that account in relation to that amount; and
  - (g) subtracting the conversion amount (if any) specified in that account in relation to that amount.
- (2) Sub-paragraph (3) applies if—

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- (a) M has received a related payment in respect of the termination of the employment;
  - (b) the terms and conditions relating to the employment require the payment to be reduced to take account of any contribution the employing authority is required to make to the scheme manager pursuant to regulation 35; and
  - (c) the payment has not been reduced.
- (3) The amount of the payment (or, if there is more than one payment, the aggregate amount of those payments) is deducted from the amount of the pension.
- (4) Sub-paragraph (5) applies if—
- (a) the reason for the termination is redundancy; and
  - (b) the contribution paid by the employing authority under regulation 35 is insufficient to meet the cost of the pension.
- (5) The amount of pension is reduced by the appropriate amount.
- (6) The appropriate amount is the amount determined by the scheme manager as being necessary to ensure that the cost does not exceed the payment, unless and to the extent that a contribution paid by M under regulation 32 makes up the insufficiency.
- (7) In sub-paragraph (2) a related payment is—
- (a) a redundancy payment under the Employment Rights Act 1996**(130)**,
  - (b) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain, or
  - (c) a payment made by virtue of any of the arrangements made pursuant to paragraph 26(3) of Schedule 4 to the 2006 Act**(131)** or paragraph 26(3) of Schedule 3 to the 2006 (Wales) Act.
- (8) The cost referred to in sub-paragraph (4) is the amount which the scheme manager determines is necessary to buy out the cost of the actuarial reduction that would apply if the pension were calculated under paragraph 6 of this Schedule.
- (9) The cost does not include the cost of early payment of an additional pension under Chapter 5 of Part 4.
- (10) In determining the amount under sub-paragraph (6) or (8), the scheme manager must have regard to the advice of the scheme actuary.
- (11) For the purposes of sub-paragraph (1)(b), the actuarial reduction must take account of—
- (a) any buy-out election under Chapter 3 of Part 4;
  - (b) the scheme years that fall within the buy-out period (see regulation 45(6)); and
  - (c) in relation to each such scheme year, the number of years in respect of which the actuarial reduction is bought out.

## SCHEDULE 14

Regulation 112

### Lump sum on death

#### Interpretation

1. In this Schedule, the words and expressions listed in column 1 of the table have the meaning given by the corresponding entry in column 2.

**(130)** 1996 c.18.

**(131)** Paragraph 26(3) is prospectively repealed by section 179(2) of the Health and Social Care Act 2012 (c.7).

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning</i>
re-employed pensioner	A person (P) who, at P's date of death, was both— <ul style="list-style-type: none"> <li>(a) an active member otherwise than in service in an employment in respect of which P had exercised an election under regulation 84; and</li> <li>(b) a pensioner member.</li> </ul>
partial retirement pensioner	a person (P) who, at P's date of death was both— <ul style="list-style-type: none"> <li>(a) an active member in service in an employment in respect of which P had exercised an election under regulation 84; and</li> <li>(b) a pensioner member by virtue of being entitled to a pension under that regulation.</li> </ul>
earnings reference period	the period ending on— <ul style="list-style-type: none"> <li>(a) in the case of an active member, the last day of the scheme year immediately preceding the scheme year in which the member (M) died and beginning on the later of— <ul style="list-style-type: none"> <li>(i) the first day of the scheme year in which M first joined the scheme;</li> <li>(ii) the first day of the tenth scheme year preceding the scheme year in which M died;</li> </ul> </li> <li>(b) in the case of a partial retirement member, the last date on which an election under regulation 84 was exercised;</li> <li>(c) in the case of a pension credit member, the valuation day.</li> </ul>
recent leaver	a person— <ul style="list-style-type: none"> <li>(a) who left pensionable service less than 12 months before the date of the person's death;</li> <li>(b) who is neither qualified for a retirement pension pursuant to regulation 72 nor is a pensioner member because of rights resulting from that employment; and</li> <li>(c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.</li> </ul>
relevant earnings	where the member (M) has— <ul style="list-style-type: none"> <li>(a) 365 days of pensionable earnings in the period of 12 months ending on the last</li> </ul>

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<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning</i>
	<p>day of pensionable service, the amount of those pensionable earnings; or</p> <p>(b) less than 365 days of pensionable earnings in the period of 12 months ending on the last day of pensionable service, the amount of earnings represented by the formula—</p> $\frac{PE \times 365}{N}$ <p>where—</p> <p>PE is the amount of pensionable earnings in the period of 12 months ending on the last day of M's pensionable service; and</p> <p>N is the number of days of pensionable service in that 12 month period.</p>

**Death of active member**

- 2.—(1) Except where paragraph 6 or 7 applies, a lump sum on death is payable under this paragraph in respect of the death of an active member before the member reaches the age of 75.
- (2) The amount of the lump sum on death payable is equal to the higher of—
- (a) twice the member's relevant earnings; or
  - (b) twice the member's re-valued pensionable earnings for the scheme year falling in the earnings reference period which has the largest re-valued pensionable earnings.
- (3) Re-valued pensionable earnings must be construed in accordance with paragraph 7(3).

**Death of deferred member**

- 3.—(1) A lump sum on death is payable under this paragraph in respect of the death of a deferred member before the member reaches the age of 75.
- (2) The amount of the lump sum on death payable is equal to 2.025 times the amount of the member's deferred annual pension.

**Death of pensioner member**

- 4.—(1) Except where paragraph 6 or 7 applies, a lump sum on death is payable under this paragraph in respect of the death of a pensioner member (P).
- (2) The amount of the lump sum on death payable is equal to the lesser of—
- (a) five times the annual rate of pension (excluding any element in respect of additional pension), less the amount of the pension payments already made to the member; and
  - (b) the amount that would have been payable under paragraph 2 had the member died on the member's last day of pensionable service, 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 77.



(3) If P exercised the option under regulation 51, for the purposes of sub-paragraph (2)(a), the reference 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.

#### **Death of recent leaver**

5.—(1) A lump sum on death is payable under this paragraph in respect of the death of a recent leaver before the person reaches the age of 75.

(2) The amount of the lump sum on death payable is equal to 2.025 times the amount of the deferred annual pension to which the recent leaver would have been entitled had that pension been calculated by reference to the pensionable service the recent leaver was entitled to count in the employment that has ceased.

#### **Death of re-employed pensioner**

6.—(1) A lump sum on death is payable under this paragraph in respect of the death of a re-employed pensioner (P).

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

- (a) five times the annual rate of the relevant pension; and
- (b) the amount found by virtue of paragraph 4(2) in respect of each pension to which P has been entitled for less than 5 years.

(3) The relevant pension is—

- (a) if P dies before reaching normal pension age, a Tier 2 IHP (within the meaning of regulation 90);
- (b) if P dies on or after reaching normal pension age, a pension to which P would have been entitled under regulation 73 at the date of death.

(4) If P exercised the option under regulation 51, for the purposes of sub-paragraph (2)(b), the reference in paragraph 4(2) 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.

#### **Death of partial retirement pensioner**

7.—(1) A lump sum on death is payable under this paragraph in respect of the death of a partial retirement pensioner.

(2) The amount of the lump sum on death payable is equal to the sum of—

- (a) the appropriate fraction of an amount that is the better of—
  - (i) twice the member's relevant earnings; and
  - (ii) twice the member's re-valued pensionable earnings for the scheme year falling in the earnings reference period which has the largest re-valued pensionable earnings; and
- (b) the lesser of—

- (i) the total of the amounts found by virtue of paragraph 4(2)(a) for each pension drawn down under regulation 84; and
- (ii) the appropriate fraction of an amount that is the better of—
  - (aa) twice the member's re-valued pensionable earnings for the period of 12 months ending on the date on which the member last exercised the option under regulation 84; and

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(bb) twice the member's re-valued pensionable earnings for the scheme year falling in the earnings reference period which has the largest re-valued pensionable earnings,

less any lump sum paid to the member in exchange for pension under regulation 77 as a result of the member exercising the option under regulation 84.

(3) In this paragraph—

“appropriate fraction” means—

$$\frac{DPS}{TDPS}$$

where—

DPS is, where the member continues in pensionable service as an active member on the election day (or the last such election day if the option has been exercised more than once), the total number of days of pensionable service which do not relate to the specified percentage of pension at the election day; and

TDPS is the aggregate of DPS and the total number of days of pensionable service (at the election day or the last such election day if the option has been exercised more than once) which relate to the specified percentage of pension payable;

“election day” has the meaning given in regulation 84;

“re-valued pensionable earnings” means, in relation to a scheme year, an amount equal to the actual pensionable earnings for the year increased by the rate of change in prices specified by the Treasury by order under section 9 of the 2013 Act.

### **Death of pension credit member**

**8.—**(1) A lump sum on death is payable under this paragraph in respect of the death of a pension credit member.

(2) Paragraph (1) does not apply if—

(a) the pension credit member dies after benefits attributable to the pension credit have become payable; and

(b) the death occurs more than five years after the member's pension becomes payable.

(3) If the pension credit member dies before benefits derived from the credit have become payable, the amount of the lump sum is equal to 2.025 times the amount of the annual pension to which the pension credit member would have been entitled under regulation 76 if the member had reached whichever is the later of age 65 or state pension age on the date of death.

(4) If the pension credit member dies after a pension under regulation 76 has become payable, the amount of the lump sum is equal to the lesser of amount A and amount B minus any lump sum paid to the pension credit member when the pension came into payment as a result of the member exercising the option under regulation 77.

(5) For the purposes of sub-paragraph (4)—

(a) amount A is an amount which is five times the annual amount of pension payable to the member at the date of death, less the amount of the pension payments already made to the member;

(b) amount B is the amount which is the higher of—

(i) twice the pension debit member's re-valued pensionable earnings for the period of 12 months ending on the valuation day; and

- (ii) twice the pension debit member's re-valued pensionable earnings for the scheme year falling in the earnings reference period which has the largest re-valued pensionable earnings.

(6) In this paragraph—

“annual amount of pension” means the sum of—

- (a) the annual rate of pension payable to the member as at the beginning date for that pension; and
- (b) the increase (if any) in that annual rate under the Pensions (Increase) Act 1971<sup>(132)</sup> payable as at the date of death;

“the beginning date”, in relation to a pension, has the meaning given by section 8(2A) of the Pensions (Increase) Act 1971<sup>(133)</sup>;

“valuation day” means the day referred to in section 29(7) of the 1999 Act.

### **Payment of lump sums on death**

**9.—(1)** A lump sum payable under paragraphs 1 to 8 must be paid in accordance with this paragraph.

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

(3) A member may give notice to the scheme manager—

(a) specifying—

- (i) the member's personal representatives;
- (ii) one or more other individuals; or
- (iii) one incorporated or unincorporated body, to whom the lump sum is to be paid; and

(b) where two or more individuals are specified, specifying the percentage of the payment payable to each of them.

(4) If the member has—

- (a) given notice under sub-paragraph (3) specifying a person; and
- (b) not revoked that notice,

the lump sum (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person unless sub-paragraph (5) or (7) applies.

(5) This sub-paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made; or
- (b) the payment to that person is not, in the opinion of the scheme manager, reasonably practicable.

(6) If the member—

- (a) leaves a surviving adult dependant; and
- (b) has not given notice under sub-paragraph (3) or has revoked any notice so given,

the lump sum may be paid to that person unless sub-paragraph (7) applies.

(7) This sub-paragraph applies if the person to whom the lump sum (or a specified percentage of the lump sum) would otherwise be payable has been convicted of an offence specified in paragraph 12 of Schedule 3 (forfeiture of rights to benefits) and the Secretary of State has directed, as a

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<sup>(132)</sup> 1971 c.56.

<sup>(133)</sup> Section 8(2A) was inserted by section 39(1) and (4) of the Welfare Reform and Pensions Act 1999 (c.30).

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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 sub-paragraph (3)—

(a) must be given in writing; and

(b) may be revoked at any time by a further notice in writing.

(9) The scheme manager may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within sub-paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed—

(a) £5,000; or

(b) any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965(**134**) as the amount to be treated as substituted for references to £500 in section 1 of that Act.

(10) The prohibition on assignment of benefits in paragraph 10 of Schedule 3 does not apply to an assignment by personal representatives under this paragraph.

## SCHEDULE 15

Regulation 163

### Definitions

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
the 1993 Act	Pension Schemes Act 1993( <b>135</b> )
the 1995 Act	Pensions Act 1995( <b>136</b> )
the 1995 Regulations	National Health Service Pension Scheme Regulations 1995( <b>137</b> )
the 1995 Section	the section of the National Health Service Pension Scheme for England and Wales set out in the 1995 Regulations
the 1999 Act	Welfare Reform and Pensions Act 1999( <b>138</b> )
the 2004 Act	Finance Act 2004( <b>139</b> )
the 2006 Act	National Health Service Act 2006( <b>140</b> )
the 2006 (Wales) Act	National Health Service (Wales) Act 2006( <b>141</b> )

(134) 1965 c.32.

(135) 1993 c.48.

(136) 1995 c.26.

(137) S.I. 1995/300, as amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280, 2008/654 and 2263, 2009/381, 1298 and 2466, 2010/492 and 1634, 2011/591 and 2586, 2012/610, 2013/413, 2014/78, 570, 1607 and 3061 and 2015/95 and 96; and as modified by S.I. 1996/971.

(138) 1999 c.30.

(139) 2004 c.12.

(140) 2006 c.41.

(141) 2006 c.42.

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
the 2008 Regulations	National Health Service Pension Scheme Regulations 2008( <b>142</b> )
the 2008 Section	the section of the National Health Service Pension Scheme for England and Wales set out in the 2008 Regulations
the 2013 Act	Public Service Pensions Act 2013( <b>143</b> )
accrual rate	the fraction of pensionable earnings that accrue as earned pension for a financial year
accrued rights	does not include a right to benefits attributable (directly or indirectly) to a pension credit
active member	see section 124(1) of the 1995 Act. Except where the context otherwise requires refers to membership of this scheme (but see regulation 85(3))
actuarial reduction	see paragraph 9 of Schedule 9
additional pension	unless the context otherwise requires, so much of a pension payable by virtue of contributions paid under Chapter 5 of Part 4
allocation amount	the amount of the pension allocated in consequence of making an allocation election
allocation election	an election under regulation 51
APMS contract	arrangements under section 83(2) of the 2006 Act( <b>144</b> ) or section 41(2)(b) of the 2006 Wales Act (primary medical services) between the National Health Service Commissioning Board or Local Health Board and an APMS contractor
APMS contractor	a person— (a) with whom the National Health Service Commissioning Board or Local Health Board has made arrangements under section 83(2) of the 2006 Act or section 41(2)(b) of the 2006 Wales Act; and (b) who has entered into, or would be eligible to enter into, a GMS contract or a PMS agreement for the provision of primary medical services
automatic enrolment date	see section 3(7) of the Pensions Act 2008( <b>145</b> )

(142) S.I. 2008/653, as amended by S.I. 2008/2263, 2009/381, 1298 and 2446, 2010/492 and 1634, 2011/591 and 2586, 2012/610, 2013/413, 2014/78, 570 and 1607 and 2015/95 and 96.

(143) 2013 c.25.

(144) Section 83(2) was substituted by section 55(1) of, and paragraph 30(1) and (2) of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

(145) 2008 c.30. Section 3(7) has been amended by section 6(1) of the Pensions Act 2011 (c.19).

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<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
automatic re-enrolment date	see regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010( <b>146</b> )
base rate	(a) the Bank of England base rate 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) if an order under section 19 of the Bank of England Act 1998( <b>147</b> ) is in force, an equivalent rate determined by the Treasury under that section
Board and advisory work	see paragraph 1 of Schedule 10
CCT	a Certificate of Completion of Training awarded under section 34L(1) of the Medical Act 1983( <b>148</b> ), including any such certificate awarded in pursuance of the competent authority functions of the General Medical Council specified in section 49B of, and Schedule 4A to, that Act( <b>149</b> )
certification services	services related to the provision of medical certificates listed in Schedule 4 to the GMS Contracts Regulations
Clinical Commissioning Group	a body corporate established under section 11 of the 2006 Act( <b>150</b> )
connected scheme	see section 4(6) of the 2013 Act, but the provisions of the National Health Service Pension Scheme (Additional Voluntary Contributions) Regulations 2000( <b>151</b> ) are not a connected scheme for the purpose of these Regulations
conversion amount	see paragraph 10 of Schedule 9
corresponding health service scheme	(a) a pension scheme provided under regulations made under section 1(2)(e) of the Public Service Pensions Act 2013 and having effect in Scotland; or (b) a pension scheme established under section 1(2)(e) of the Public Service Pensions Act (Northern Ireland) 2014( <b>152</b> )

(**146**) S.I. 2010/772. Regulation 12 has been amended by S.I. 2012/215.

(**147**) 1998 c.11.

(**148**) 1983 c.54. Section 34L was inserted by S.I. 2010/234.

(**149**) Section 49B was inserted by S.I. 2007/3101 and amended by S.I. 2008/1774 and 2010/234. Schedule 4A was inserted by S.I. 2007/3101 and amended by S.I. 2010/234.

(**150**) Section 11 was inserted by section 10 of the Health and Social Care Act 2012.

(**151**) S.I. 2000/619 as amended by S.I. 2001/1428 and 3649, 2002/610, 2005/3074, 2006/600, 2007/3280, 2008/655, 2009/2446, 2010/492, 2011/2586, 2013/413, 2014/78 and 2015/96.

(**152**) 2014 c.2 (N.I.).

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
corresponding scheme	a corresponding health service scheme the provisions of which the Secretary of State has determined correspond to the provisions of these Regulations
deferred member	in relation to a period of pensionable service is a person (P) who— (a) ceases to be an active member in relation to that period of service before P reaches normal pension age; (b) does not become a pensioner member in relation to that period of service; and (c) has at least two years' qualifying service or in respect of whom a transfer payment otherwise than from another occupational pension scheme has been received
dental contractor	see paragraph 4 of Schedule 5
dental performers list	a list of dental practitioners prepared in accordance with regulations made under— (a) in the case of England, section 106 of the 2006 Act <sup>(153)</sup> ; or (b) in the case of Wales, section 63 of the 2006 (Wales) Act
dental practitioner	see paragraph 7 of Schedule 5
determination employer	see paragraph 8 of Schedule 5
dispensing services	the provision of drugs, medicines or appliances that may be provided as pharmaceutical services by a medical practitioner in accordance with arrangements made under— (a) in the case of England, regulation 46 of the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 <sup>(154)</sup> ; and (b) in the case of Wales, regulation 4 of the National Health Service (Pharmaceutical Services) (Wales) Regulations 2013 <sup>(155)</sup>
doctors' retainer scheme	(a) in relation to England, a scheme described in section 20 of the General Medical Services Contracts Statement of Financial Entitlement Directions 2013 <sup>(156)</sup> ; and

<sup>(153)</sup> Section 106 has been amended by section 55(1) of, and paragraph 47 of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

<sup>(154)</sup> S.I. 2013/349.

<sup>(155)</sup> S.I. 2013/898 (W. 102).

<sup>(156)</sup> The Directions are available online at <https://www.gov.uk/government/publications/nhs-primary-medical-services-directions-2013> or a copy may be requested by writing to: Ministerial Correspondence and Public Enquiries Unit, Department of Health, Richmond House, 79 Whitehall, London, SW1A 2NS or telephoning: 020 7210 4850.

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<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
	(b) in relation to Wales, a scheme described in section 16 of Document SFE/April/2013 attached to the Directions to Local Health Boards as to the Statement of Financial Entitlement Directions 2013( <b>157</b> )
employing authority	see regulation 33(6)
foundation trainee	a dental practitioner who is employed as a foundation trainee as a consequence of a placement arrangement made by a local postgraduate dental dean or a director of postgraduate dental education
GDS contract	a general dental services contract under section 100 of the 2006 Act( <b>158</b> ) or section 57 of the 2006 (Wales) Act (general dental services contracts: introductory)
GDS contractor	a person who is a party to a GDS contract, other than the National Health Service Commissioning Board or a Local Health Board
GMS contract	(a) in relation to England, a contract under section 84 of the 2006 Act( <b>159</b> ) or under article 13 of the General Medical Services Transitional and Consequential Provisions Order 2004( <b>160</b> ); (b) in relation to Wales, a contract under section 42 of the 2006 (Wales) Act or under article 13 of the General Medical Services Transitional and Consequential Provisions (Wales) Order 2004( <b>161</b> )
GMS Contracts Regulations	(a) in relation to England, the National Health Service (General Medical Services Contracts) Regulations 2004( <b>162</b> ); (b) in relation to Wales, the National Health Service (General Medical Services Contracts) (Wales) Regulations 2004( <b>163</b> )
GMS practice	(a) a registered medical practitioner who belongs to group D in regulation 27(1); (b) two or more such individuals practising in partnership; or (c) a company limited by shares,

(157) The Directions are available online at <http://www.wales.nhs.uk/sites3/page.cfm?orgid=480&pid=6070> or a copy may be requested by writing to: Welsh Government, Cathays Park, Cardiff, CF10 3NQ or telephoning: 0300 060 3300 (English language) or 0300 060 4400 (Welsh language).

(158) Section 100 has been amended by section 55(1) of, and paragraph 43 of Schedule 4 to, the Health and Social Care Act 2012 (c.7).

(159) Section 84 has been amended by section 55(1) of, and paragraph 31 of Schedule 4 to, the Health and Social Care Act 2012.

(160) S.I. 2004/433 as amended by S.I. 2004/865.

(161) S.I. 2004/477 as amended by S.I. 2004/1016.

(162) S.I. 2004/291 as amended by S.I. 2004/2694, 2005/893 and 3315, 2006/1501, 2007/3491, 2008/528 and 1700, 2009/2230, 2010/22, 231, 234, 478, 578 and 1621, 2012/970, 1479, 1916 and 2404, 2013/363 and 2014/465.

(163) S.I. 2004/478 as amended by S.I. 2004/1017, 2006/358, 2007/121 and 205, 2008/1329 and 1425, 2009/462, 2010/22, 234, 478, 729, 1621 and 1647, 2011/704, 2012/1916 and 2404, 2013/235 and 898 and 2014/1887 and 2291.



<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
	with whom the National Health Service Commissioning Board or Local Health Board has entered into a GMS contract
GOS contract	a contract under section 117 of the 2006 Act <sup>(164)</sup> (general ophthalmic services contracts) for the provision of mandatory services and additional services as defined in regulation 2(1) of the General Ophthalmic Services Contracts Regulations 2008 <sup>(165)</sup>
GP registrar	a medical practitioner who is being trained in general practice— (a) in England by a medical practitioner who is approved under section 34I of the Medical Act 1983 <sup>(166)</sup> for the purpose of securing maintenance of the standards and requirements established under section 34H(1)(a) of that Act <sup>(167)</sup> , whether as part of training leading to the award of a CCT or otherwise; or (b) in Wales by a medical practitioner who is being trained in general medical practice by a GP trainer whether as part of training leading to the award of a CCT or otherwise
guaranteed minimum pension	see the 1993 Act, section 8 <sup>(168)</sup>
health service worker	a person engaged in the provision of health services whether under the 2006 Act, the 2006 (Wales) Act or otherwise
host Board	in respect of— (a) a medical practitioner or a non-GP provider specified in paragraph (1); (b) a locum medical practitioner; or (c) a medical practitioner who is employed by a medical contractor in pursuance of a GMS, a PMS or an OOH contract or a PMS agreement, means— (i) the National Health Service Commissioning Board or each Local Health Board with which the partnership, company, practice, individual or contractor (as the case may

<sup>(164)</sup> Section 117 has been amended by section 55(1) of, and paragraph 55 of Schedule 4 to, the Health and Social Care Act 2012.

<sup>(165)</sup> S.I. 2008/1185. The definitions of “mandatory services” and “additional services” were substituted by S.I. 2010/634.

<sup>(166)</sup> 1983 c.54. Section 34I was inserted by S.I. 2010/234.

<sup>(167)</sup> Section 34H was inserted by S.I. 201/234.

<sup>(168)</sup> Section 8 has been amended by sections 151 and 177 of, and paragraph 23(a) and (b) of Schedule 5 and Part 3 of Schedule 7 to, the Pensions Act 1995 (c.26), section 1(1) of, and paragraph 34(a) and (b) of Schedule 1 to, the Social Security Contributions (Transfer of Functions, etc) Act 1999 (c.2), section 15(3)(a) of, and paragraphs 1 and 3(1) to (4) of Schedule 4 to, the Pensions Act 2007 (c.22), section 4(1) of, and paragraphs 7 and 8(1) to (3) of Schedule 1 to, the National Insurance Contributions Act 2008 (c.16), section 11(4) of, and paragraphs 18 and 19 of Schedule 4 to, the Marriage (Same Sex Couples) Act 2013 (c.30) and article 2(1) of, and paragraph 1 of Schedule 1 to, S.I. 2005/2050, and is prospectively amended by section 15(3)(a) and section 27(2) of, and paragraphs 46 and 47 of Schedule 4 and Part 7 of Schedule 7 to the Pensions Act 2007 and section 24(1) of, and paragraphs 1, 2 and 7(1) to (5) of Schedule 13 to, the Pensions Act 2014 (c.19).

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<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
	<p>be) has entered into such a contract or agreement; and</p> <p>(ii) (in the case of a medical practitioner) the relevant Board on whose medical performer’s list the practitioner’s name appears;</p> <p>in respect of—</p> <p>(a) a dental contractor specified in paragraph (2); or</p> <p>(b) a dental practitioner who is employed by a dental contractor to perform GDS or PDS in pursuance of a GDS contract or a PDS agreement but is not a party to that contract or agreement, means—</p> <p>(i) in relation to—</p> <p>(aa) England, the National Health Service Commissioning Board for which it provides primary dental services under section 99(1) of the 2006 Act(169); or</p> <p>(bb) each Local Health Board which relates to arrangements under which it provides primary dental services under section 56(1) or (2) of the 2006 Wales Act; and</p> <p>(ii) where appropriate, the relevant Board on whose dental performer’s list the practitioner’s name appears.</p> <p>(1) The medical practitioner or non-GP provider is—</p> <p>(a) an individual who is a GMS or a PMS practice or an APMS contractor;</p> <p>(b) a partner in a partnership that is—</p> <p>(i) a GMS or a PMS practice or an APMS contractor; and</p> <p>(ii) has entered into a GMS contract, a PMS agreement or an APMS contract for the provision of primary medical services;</p> <p>(c) a shareholder in a company limited by shares that is—</p> <p>(i) a GMS or a PMS practice or an APMS contractor; and</p> <p>(ii) has entered into a GMS contract, a PMS agreement or an APMS contract for the provision of primary medical services.</p> <p>(2) The dental contractor is one who provides primary dental services under—</p> <p>(i) a GDS contract;</p>

(169) Section 99(1) was substituted by section 55(1) of, and paragraph 42(1) and (2) of Schedule 4 to, the Health and Social Care Act 2012 (c. 7).

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
	<ul style="list-style-type: none"> <li>(ii) a PDS agreement (whether or not a PDS contractor is a party to the agreement); or</li> <li>(iii) a contract for services</li> </ul>
lifetime allowance	in relation to a person, has the meaning given in section 218 of the 2004 Act <sup>(170)</sup>
locum practitioner	<p>a 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 an entity specified in paragraph (1) to deputise or temporarily assist in the provision of services, work or functions specified in paragraph (2) or any combination of these.</p> <p>(1) The entities are—</p> <ul style="list-style-type: none"> <li>(a) a GMS practice;</li> <li>(b) a PMS practice;</li> <li>(c) an APMS contractor;</li> <li>(d) an OOH provider; or</li> <li>(e) a Local Health Board or the National Health Service Commissioning Board.</li> </ul> <p>(2) The services, etc., are—</p> <ul style="list-style-type: none"> <li>(a) essential services, additional services, enhanced services, pharmaceutical services or dispensing services within the meaning of the GMS Contracts Regulations;</li> <li>(b) OOH services;</li> <li>(c) commissioned services;</li> <li>(d) certification services;</li> <li>(e) Board and advisory work;</li> <li>(f) health related functions exercised under section 75 of the 2006 Act;</li> <li>(g) NHS 111 services; or</li> <li>(h) collaborative services</li> </ul>
medical contractor	see paragraph 3 of Schedule 5
medical performers list	<p>a list of registered medical practitioners prepared and published—</p> <ul style="list-style-type: none"> <li>(a) by the National Health Service Commissioning Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (England) Regulations 2013; or</li> <li>(b) by a Local Health Board pursuant to regulation 3(1) of the National Health Service (Performers Lists) (Wales) Regulations 2004</li> </ul>
medical practitioner	see regulation 166

<sup>(170)</sup>Section 218 has been amended by section 67 of, and paragraphs 1 and 2 of Schedule 18 to, the Finance Act 2011 (c.11) and section 48(1) to (3) and (5) of, and paragraphs 5 and 6(1) to (3) of Schedule 22 to, the Finance Act 2013 (c.29).

**Status:** This is the original version (as it was originally made).

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
member	in relation to this scheme means— (a) an active member; (b) a deferred member; (c) a pensioner member; or (d) a pension credit member
NHS 111 services	services provided as part of the telephone advice line commissioned by a Clinical Commissioning Group or the National Health Service Commissioning Board
NHS employment	employment or engagement of an individual who is of a description in— (a) any of sub-paragraphs (a) to (e) of paragraph (1) of regulation 18, or (b) sub-paragraph (a) or (b) of paragraph (2) of that regulation, unless the scheme manager certifies that the employment is not NHS employment
NHS organisation	see paragraph 1 of Schedule 5
non-GP provider	(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 Secretary of State that he assists in the provision of NHS services provided by that practice; (b) a partner in a partnership— (i) all of whose members have entered into a PMS agreement for the provision of primary medical services; but (ii) who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that partnership; (c) a partner in a partnership that is an APMS contractor— (i) that has entered into an APMS contract for the provision of primary medical services; but (ii) who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that partnership; (d) a shareholder in a company limited by shares that is— (i) a GMS practice; or (ii) a PMS practice or APMS contractor that has entered into a PMS agreement or APMS

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
	<p>contract for the provision of primary medical services,</p> <p>but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he assists in the provision of NHS services provided by that company;</p> <p>(e) an individual who is a PMS practice or an APMS contractor but who is not a GP provider and who demonstrates to the satisfaction of the Secretary of State that he participates in the provision of NHS services</p>
normal minimum pension age	see section 279(1) of the 2004 Act
normal pension age	is determined in accordance with section 10 of the 2013 Act
OOH provider	see regulation 164
OOH services	<p>services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice, APMS contractor or PMS practice to patients to whom the practice or contractor is required by its GMS contract, APMS contract or PMS agreement to provide essential services (see the GMS Contracts Regulations), would be or would be similar to essential services</p> <p>In this definition—</p> <p>(a) “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;</p> <p>(b) “out of hours period” means—</p> <p>(i) the period beginning at 6:30pm on any day from Monday to Thursday and ending at 8am the following day;</p> <p>(ii) the period between 6:30pm on Friday and 8am the following Monday;</p> <p>(iii) Good Friday, Christmas Day and a bank holiday</p>
overtime	<p>any period of time worked in excess of the lesser of—</p> <p>(a) the period of time for which the person has contracted to work in the ordinary course of events; or</p> <p>(b) such period of time as the scheme manager determines a person engaged in similar employment would reasonably be contracted to work in the ordinary course of events</p>

**Status:** This is the original version (as it was originally made).

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
PDS agreement	an agreement for the provision of primary dental services pursuant to section 64 arrangements (see the 2006 (Wales) Act) or section 107 arrangements (see the 2006 Act)
PDS contractor	a person who— (a) is a party to a PDS agreement; and (b) is neither the National Health Service Commissioning Board nor a Local Health Board
PMS agreement	an agreement for the provision of primary medical services pursuant to— (a) section 50 arrangements (see the 2006 (Wales) Act); (b) section 92 arrangements (see the 2006 Act); or (c) a transitional agreement under Part 4 of the General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004(171)
PMS practice	(a) an individual, (b) two or more individuals practising in partnership, or a company limited by shares, with whom, or with whose members the National Health Service Commissioning Board or Local Health Board has entered into a PMS agreement under which primary medical services are provided (otherwise than by the National Health Service Commissioning Board or Local Health Board)
pay period	in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract
pension credit	a credit under section 29(1)(b) of the 1999 Act (including a credit under corresponding Northern Ireland legislation)
pension credit member	see section 124(1) of the 1995 Act
pensionable employment	NHS employment in respect of which contributions are payable under Part 4
pensioner member	in relation to this scheme, is a person who is entitled to payment of a retirement pension under the scheme
practice staff	a person who is— (a) not a registered medical practitioner, a GP registrar or a non-GP provider, and

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(171) S.I. 2004/865.

<i>Column 1</i>	<i>Column 2</i>
<i>Word or expression</i>	<i>Meaning or reference to provision where meaning is to be found</i>
	(b) is employed by a GMS practice, a PMS practice, an APMS contractor or an OOH provider to assist in the provision of the services it provides
practitioner	see regulation 27(5)
prospective normal pension age	in relation to a member's prospective entitlement to benefits under this scheme, means the normal pension age that the scheme manager determines (by reference to Treasury directions made under section 11(2) of the 2013 Act) would apply in relation to those benefits
public sector transfer arrangements	arrangements approved by the Secretary of State as providing reciprocal arrangements for the payment and receipt of transfer values between this scheme and other occupational pension schemes
qualifying service	see regulation 22
quarter	a 3 month period ending on the last day of March, June, September or December
scheme manager	see regulation 3
scheme year	a period of 12 months starting on 1st April
standard earned pension	pension which— (a) is earned under this scheme; and (b) is payable without actuarial reduction at normal pension age
state pension age	pensionable age, as specified from time to time in Part 1 of Schedule 4 to the 1995 Act
this scheme	the scheme established by these Regulations
transfer payment	a transfer value payment or a cash transfer sum made or received by the scheme in relation to a member

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations establish a career average re-valued earnings scheme for the payment of pensions and other benefits to and in respect of health service workers in England and Wales.

Part 1 provides for the establishment of the scheme and for it to be known as the NHS Pension Scheme 2015.

Part 2 contains governance provisions.

*Status: This is the original version (as it was originally made).*

Chapter 1 provides for the Secretary of State to be the scheme manager and allows for the delegation of the scheme manager's functions. It also establishes a Pension Board (and introduces Schedule 1, which makes further provision about that Board) and a Scheme Advisory Board (and introduces Schedule 2, which makes further provision about that Board).

Chapter 2 requires the appointment of a scheme actuary and provides for valuation of the Scheme.

Chapter 3 introduces Schedule 3, which provides for various administrative matters: scheme accounts and information; claims for, and payments of, benefits; interest on late payments; assignment, offset and forfeiture; insolvency of persons entitled to benefits; determination of questions; taxation.

Part 3 provides for scheme membership.

Chapter 1 deals with joining and leaving the Scheme and the relationship with wider automatic enrolment legislation, and introduces Schedule 4 (which provides for opting out of the Scheme).

Chapter 2 sets out who is eligible for membership of the Scheme, and introduces Schedule 5 (which provides for membership gateways) and Schedule 6 (which sets out other persons to whom membership of the Scheme may be extended). It also introduces Schedules 7 and 8 (which deal with restrictions on eligibility).

Chapter 3 establishes the concepts of pensionable service and qualifying service, and set out how to treat certain absences from work and breaks in pensionable service.

Chapter 4 provides for the establishment and closure of a member's pension accounts in relation to membership of the Scheme, and how to calculate the amount of accrued pension under the Scheme. It also introduces Schedule 9 (which provides further detail on pension accounts).

Part 4 provides for the payment of contributions by members and employers and also the repayment of a member's contributions after short-service.

Chapter 1 deals with determination and payment of contributions and introduces Schedule 10 (which contains provisions for determining the income of medical and dental practitioners), Schedule 11 (which determines pensionable earnings for the purpose of setting contribution rates) and Schedule 12 (which provides for contribution payments for medical and dental practitioners).

Chapter 2 provides for refunds after short-service.

Chapter 3 provides for a facility to buy-out the actuarial reduction which is applied on taking a retirement pension earlier than normal pension age.

Chapter 4 allows a member to elect to allocate part of their pension to provide a pension on their death for a spouse, civil partner or dependant.

Chapter 5 allows a member to elect to pay additional contributions to purchase an amount of additional pension payable when the main pension is taken.

Part 5 provides for a member's entitlement to payment of retirement benefits.

Chapter 1 sets the basic qualifying criteria for receipt of benefits from the Scheme.

Chapter 2 provides for age retirement benefits, and introduces Schedule 13 (which provides for the calculation of pensions).

Chapter 3 provides for benefits on early and premature retirement.

Chapter 4 provides for benefits payable in the case of partial retirement.

Chapter 5 sets out the benefits payable in the case of ill-health of a member.



Chapter 6 sets out the entitlement of a person who is a member of the Scheme in more than one capacity or who has more than one employment.

Chapter 7 deals with the reduction of the amount of pension payable in the event of re-employment of a pensioner member.

Chapter 8 provides for conversion of a pension to a lump sum in the event of serious ill-health of a member.

Chapter 9 deals with contracting out obligations connected to provision of guaranteed minimum pensions.

Chapter 10 provides for a member's benefits to be reduced if the member is a pension debit member.

Part 6 provides for survivor benefits.

Chapter 1 provides for benefits to adult survivors, and introduces Schedule 14 (which provides for lump sum payments on the death of a member).

Chapter 2 provides for benefits to child survivors.

Chapter 3 allows for the suspension and recovery of payments made under Part 6 in certain circumstances.

Part 7 provides for the payment and receipt of transfer values including club transfers.

Chapter 1 provides various definitions used in this Part.

Chapter 2 provides for transfers out, transfers in, and bulk transfers.

Chapter 3 provides the scheme manager with flexibility to deal with transfers between the Scheme and EU and overseas schemes.

Part 8 makes provision for the participation of Independent Providers of NHS services in the Scheme, including applications for and withdrawal of employing authority status.

Part 9 contains general provisions, including introducing Schedule 15 (which contains definitions used in the Scheme) and a provision allowing the scheme manager to require a guarantee, bond or indemnity for liabilities due from certain employing authorities.

An impact assessment has not been prepared for this instrument as no impact on the costs of business or the voluntary sector is foreseen.