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WELSH STATUTORY INSTRUMENTS

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**2015 No. 622 (W. 50)**

**PUBLIC SERVICE PENSIONS, WALES**

**The Firefighters' Pension Scheme (Wales) Regulations 2015**

<i>Made</i>	- - - -	<i>9 March 2015</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>10 March 2015</i>
<i>Coming into force</i>	- -	<i>1 April 2015</i>

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 1(1) and (2)(f)(1), 2(1), 3(1), (2), (3)(a) and (c), 4(5) and (6) as read with section 4(1)(2), 7(2), 8(1)(a)(3), 12(6) and (7), and 18(5), (5A)(4), (6) and (7) of, and paragraph 6(b) of Schedule 2, Schedule 3 and paragraphs 20 and 21 of Schedule 5 to, the Public Service Pensions Act 2013(5).

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

**PART 1**

**Preliminary**

**Title and commencement**

**1.**—(1) The title of these Regulations is the Firefighters' Pension Scheme (Wales) Regulations 2015.

(2) These Regulations come into force on 1 April 2015.

**Establishment of Firefighters' Pension Scheme (Wales) 2015**

**2.**—(1) These Regulations establish a scheme for the payment of pensions and other benefits to or in respect of fire and rescue workers(6) who are firefighters in Wales.

(2) This scheme is to be known as the Firefighters' Pension Scheme (Wales) 2015.

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(1) See also section 1(3) and Schedule 1.

(2) Coming into force on 1 April 2015.

(3) See also section 8(2)(a) and (4).

(4) Subsection (5A) was inserted by the Pensions Act 2014 (c. 19), section 52.

(5) 2013 c. 25.

(6) See paragraph 6 of Schedule 1 to the Public Service Pensions Act 2013 for the definition of "fire and rescue workers".

## Interpretation

### 3. In these Regulations, unless the context otherwise requires—

“1992 Scheme” (“*Cynllun 1992*”) means the Firefighters’ Pension Scheme 1992 as set out in Schedule 2 to the Firemen’s Pension Scheme Order 1992(7) as it has effect in Wales;

“2013 Act” (“*Deddf 2013*”) means the Public Service Pensions Act 2013;

“FA 2004” (“*DC 2004*”) means the Finance Act 2004(8);

“NFPS” (“*CPNDT*”) means the New Firefighters’ Pension Scheme (Wales) as set out in Schedule 1 to the Firefighters’ Pension Scheme (Wales) Order 2007(9);

“PIA 1971” (“*DPC 1971*”) means the Pensions (Increase) Act 1971(10);

“PSA 1993” (“*DCauP 1993*”) means the Pension Schemes Act 1993(11);

“WRPA 1999” (“*DDLlPh 1999*”) means the Welfare Reform and Pensions Act 1999(12);

“accrued added pension” (“*pensiwn ychwanegol cronedig*”) has the meaning given in regulation 32(4) (calculation of amount of accrued pension for purpose of deferment or retirement);

“accrued earned pension” (“*pensiwn enilledig cronedig*”) has the meaning given in regulation 32(3) (calculation of amount of accrued pension for purpose of deferment or retirement);

“active member” (“*aelod actif*”) has the meaning given in regulation 28 (active membership);

“active member’s account” (“*cyfrif aelod actif*”) means the account established under regulation 40 (establishment of active member’s account);

“actuarial guidance” (“*canllawiau actiwaraid*”) means actuarial guidance issued by the Welsh Ministers after consultation with the scheme actuary;

“added pension election” (“*dewisiad pensiwn ychwanegol*”) means the election to make added pension payments;

“added pension payments” (“*taliadau pensiwn ychwanegol*”) means periodical payments or a lump sum payment for added pension made to this scheme;

“additional adoption leave” (“*absenoldeb mabwysiadu ychwanegol*”) means leave under section 75B of the Employment Rights Act 1996(13);

“additional maternity leave” (“*absenoldeb mamolaeth ychwanegol*”) means leave under section 73 of the Employment Rights Act 1996(14);

“additional paternity leave” (“*absenoldeb tadolaeth ychwanegol*”) means leave under the Additional Paternity Leave Regulations 2010(15);

“age addition” (“*ychwanegiad oedran*”) has the meaning given in regulation 35 (determination of “the age addition”);

“allocation amount” (“*swm y dyraniad*”) means the amount of the pension allocated as a result of making an allocation election;

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(7) S.I. 1992/129. The name of the scheme was changed to the Firefighters’ Pension (Wales) Scheme by S.I. 2004/2918 (W. 257). Other amendments made are not relevant to these Regulations.

(8) 2004 c. 12.

(9) S.I. 2007/1072 (W. 110); Schedule 1 is the subject of amendments not relevant to these Regulations.

(10) 1971 c. 56.

(11) 1993 c. 48.

(12) 1999 c. 30.

(13) 1996 c. 18; section 75B was inserted by the Employment Act 2002 (c. 22), section 3.

(14) Section 73 was substituted by the Employment Relations Act 1999 (c. 26), section 7 and Schedule 4.

(15) S.I. 2010/1055.

“allocation election” (“*dewisiad i ddyrannu*”) means an election under regulation 81 (allocation election);

“amount of accrued added pension” (“*swm y pensiwn ychwanegol cronedig*”) has the meaning given in regulation 32(4) (calculation of amount of accrued pension for purpose of deferment or retirement);

“amount of accrued earned pension” (“*swm y pensiwn enilledig cronedig*”) has the meaning given in regulation 32(3) (calculation of amount of accrued pension for purpose of deferment or retirement);

“amount of added pension” (“*swm y pensiwn ychwanegol*”) means the amounts credited to the added pension account under paragraphs 11 or 14 of Schedule 1;

“annual allowance” (“*lwfans blynyddol*”) has the meaning given in section 228 (annual allowance) of FA 2004(16);

“annual allowance charge” (“*tâl lwfans blynyddol*”) has the meaning given in section 227 (annual allowance charge) of FA 2004(17);

“assumed age addition” (“*ychwanegiad oedran tybiedig*”) has the meaning given in regulation 36 (determination of “the assumed age addition”);

“assumed pensionable pay” (“*tâl pensiynadwy tybiedig*”) has the meaning given in regulation 27 (meaning of “assumed pensionable pay”);

“authority” (“*awdurdod*”) means a fire and rescue authority for an area in Wales determined in accordance with section 1 of the Fire and Rescue Services Act 2004(18);

“award” (“*dyfarniad*”) means an award of a benefit under these Regulations;

“beginning date” (“*dyddiad cychwyn*”), in relation to a pension not attributable (directly or indirectly) to a pension credit, means the date on which the pension is deemed to begin for the purpose of section 8(2) (meaning of “pension” and other supplementary provisions) of PIA 1971(19);

“child-related leave” (“*absenoldeb cysylltiedig â phlentyn*”) means—

- (a) ordinary adoption leave,
- (b) ordinary maternity leave,
- (c) additional maternity or adoption leave,
- (d) paternity leave,
- (e) additional paternity leave, or
- (f) a period of parental leave;

“closing date” (“*dyddiad cau*”), in relation to a transition member, has the meaning given in paragraph 1 of Schedule 2 (transitional provisions);

“club scheme” (“*cynllun clwb*”) means a registered occupational pension scheme (other than a connected scheme) that has agreed to make and receive club transfer value payments under the club transfer arrangements;

“club transfer” (“*trosglwyddiad clwb*”) means a transfer to or from this scheme under the club transfer arrangements;

(16) Section 228 was substituted by the Finance Act 2011 (c. 11), Schedule 17, paragraphs 1 and 4 and was amended by the Finance Act 2013 (c. 29), section 49.

(17) Section 227 was amended by Finance Act 2011, sections 65 and 66, Schedule 16, paragraph 45 and Schedule 17, paragraphs 1 and 3.

(18) 2004 c. 21.

(19) Section 8(2) was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 1(5) and the WRPA 1999 (c. 30), section 39(1) and (4). Section 8(2) of PIA 1971 may be applied subject to such modifications, adaptations and exceptions as may be specified in regulations under section 5(3) of that Act.

“club transfer arrangements” (*“trefniadau trosglwyddiadau clwb”*) means arrangements approved by the Welsh Ministers as providing reciprocal arrangements between this scheme and other registered occupational pension schemes for making and receiving club transfer value payments;

“club transfer earned pension” (*“pensiwn enilledig trosglwyddiad clwb”*) means pension attributable to the receipt of a club transfer value payment;

“club transfer value” (*“gwerth trosglwyddiad clwb”*) has the meaning given in regulation 141 (interpretation in relation to Part 10);

“club transfer value payment” (*“taliad gwerth trosglwyddiad clwb”*) means payment of a club transfer value;

“cohabiting partner” (*“partner sy’n cyd-fyw”*) has the meaning given in regulation 85 (meaning of “surviving partner”);

“the commutation amount” (*“swm y cymudiad”*), in relation to a pension, means the amount of the pension exchanged for a lump sum as a result of the exercise of the commutation option;

“commutation option” (*“opsiwn cymudo”*) means the option to exchange part of a pension for a lump sum—

- (a) exercisable under regulation 80 (option to commute part of pension) in relation to a retirement pension, or
- (b) exercisable under regulation 118 (commutation of part of pension) in relation to a pension credit member’s pension;

“connected scheme” (*“cynllun cysylltiedig”*) means another statutory pension scheme that is connected, within the meaning of section 4(6) of the 2013 Act, with this scheme;

“continuity of service” (*“parhad gwasanaeth”*), in relation to a transition member, has the meaning given in paragraph 2 of Schedule 2;

“continuous period of pensionable service” (*“cyfnod di-dor o wasanaeth pensiynadwy”*), in relation to this scheme, means a period of pensionable service under this scheme disregarding any gap in pensionable service not exceeding five years unless otherwise provided;

“death benefits” (*“buddion marwolaeth”*) means any of the following—

- (a) a surviving partner’s pension,
- (b) an eligible child’s pension, or
- (c) a lump sum death benefit;

“deferred member” (*“aelod gohiriedig”*) has the meaning given in regulation 29 (deferred membership);

“deferred member’s account” (*“cyfrif aelod gohiriedig”*) has the meaning given in regulation 53 (establishment of deferred member’s account);

“deferred pension age” (*“oedran pensiwn gohiriedig”*) is the same as a person’s state pension age, or 65 if that is higher;

“early payment reduction” (*“gostyngiad talu’n gynnar”*) has the meaning given in regulation 70 (early payment reduction);

“earned pension” (*“pensiwn enilledig”*) means earned pension payable without actuarial reduction at normal pension age;

“eligible child” (*“plentyn cymwys”*) has the meaning given in regulation 94 (meaning of “eligible child”);

“eligible child’s pension” (*“pensiwn plentyn cymwys”*) has the meaning given in regulation 93 (eligible child’s pension);

“eligible person” (“*person cymwys*”) has the meaning given in regulation 16 (eligible persons);

“financial year” (“*blwyddyn ariannol*”) means a period of one year beginning with 1 April and ending with 31 March;

“Firefighters’ Pensions Scheme Advisory Board for Wales” (“*Bwrdd Cynghori Cynllun Pensiwn y Diffoddwyr Tân ar gyfer Cymru*”) means a board established under regulation 10 (scheme advisory board: establishment);

“GMP age” (“*oedran LIPG*”) means 65 in the case of a man or 60 in the case of a woman;

“guaranteed minimum” (“*lleiafswm gwarantedig*”) means the guaranteed minimum as defined in sections 14(20) (earner’s guaranteed minimum) and 17(21) (minimum pensions for widows and widowers) of PSA 1993—

(a) as increased in accordance with the requirements of section 109(22) of that Act (annual increase of guaranteed minimum pensions), and

(b) if a reduction has been made under section 15A(23) of that Act (reduction of guaranteed minimum in consequence of pension debit), as reduced in accordance with that section;

“higher tier ill-health pension” (“*pensiwn afiechyd haen uchaf*”) means a higher tier ill-health pension payable under regulation 74(2) (entitlement to lower tier ill-health pension and higher tier ill-health pension);

“ill-health award” (“*dyfarniad afiechyd*”) means—

(a) a lower tier ill-health pension, and

(b) a higher tier ill-health pension where this has also been awarded;

“index adjustment” (“*addasiad mynegai*”) means—

(a) in relation to the opening balance of earned pension for any scheme year, the change in earnings for the previous scheme year(24), and

(b) in relation to the opening balance of club transfer earned pension for any scheme year, the in-service revaluation index that the sending scheme would have applied to the transferred pension for that scheme year, had it not been transferred;

“in-service revaluation index” (“*mynegai ailbrizio mewn-gwasanaeth*”), in relation to a pension scheme, means the percentage increase or decrease by which the pensionable earnings of a person, or a proportion of those earnings accrued as a pension, are revalued whilst the person is in pensionable service in that pension scheme;

“IQMP” (“*YMCA*”) means a medical practitioner holding a diploma in occupational medicine or an equivalent or higher qualification issued by a competent authority in an EEA State, or being an Associate, a Member or a Fellow of the Faculty of Occupational Medicine or an equivalent institution of an EEA State; and for the purposes of this definition “a competent authority” has the meaning given in section 55(1) of the Medical Act 1983(25);

“last active scheme year” (“*blwyddyn gynllun actif olaf*”) means the scheme year in which an active member of this scheme ceases to be in pensionable service under this scheme;

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(20) Section 14 was amended by the Pensions Act 1995 (c. 26), Schedule 5, paragraph 27 and Schedule 7, Part 3; the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Schedule 1, paragraph 38; and the Proceeds of Crime Act 2002 (c. 29), Schedule 11, paragraphs 1 and 22.

(21) Section 17 was amended by the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c. 35), section 284(2); the Pensions Act 2007 (c. 22), section 14(2); the Marriage (Same Sex Couples) Act 2013 (c. 30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and 2014/560.

(22) Section 109 was amended by the Pensions Act 1995 (c. 26), section 55 and S.I. 2005/2050.

(23) Section 15A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 32(1) and (3).

(24) Under section 9 of the 2013 Act the change in earnings to be applied in a period is the percentage increase or decrease as a Treasury order under that section may specify in relation to the period.

(25) 1983 c. 54; the definition of “competent authority” was inserted by S.I. 2007/3101.

“last day of pensionable service” (“*diwrnod olaf o wasanaeth pensiynadwy*”) means the last day of a continuous period of pensionable service under this scheme;

“leaving year” (“*blwyddyn ymadael*”) means the scheme year in which the relevant last day falls;

“local pension board” (“*bwrdd pensiynau lleol*”) means a board established under regulation 5 (local pension boards: establishment);

“lower tier ill-health pension” (“*pensiwn afiechyd haen isaf*”) means a lower tier ill-health pension payable under regulation 74(1) (entitlement to lower tier ill-health pension and higher tier ill-health pension);

“member” (“*aelod*”), in relation to this scheme, means an active member, deferred member, or pensioner member of this scheme;

“member contributions” (“*cyfraniadau aelodau*”) has the meaning given in regulation 119(8) (member contributions);

“normal pension age” (“*oedran pensiwn arferol*”), in relation to this scheme, means 60 as required by section 10(2) of the 2013 Act;

“occupational pension scheme” (“*cynllun pensiwn galwedigaethol*”) has the meaning given in section 1 of PSA 1993(26);

“opening balance” (“*balans agoriadol*”), in relation to a description of pension for a scheme year other than added pension, has the meaning given in regulation 44 (opening balance, index adjustment and age addition) and in relation to added pension, has the meaning given in regulation 49 (account to specify opening balance and PIA index adjustment);

“ordinary adoption leave” (“*absenoldeb mabwysiadu arferol*”) means leave under section 75A of the Employment Rights Act 1996(27);

“ordinary maternity leave” (“*absenoldeb mamolaeth arferol*”) means leave under section 71 of the Employment Rights Act 1996(28);

“parental leave” (“*absenoldeb rhiant*”) has the meaning given in regulation 2(1) of the Maternity and Parental Leave etc. Regulations 1999(29);

“partial retirement option” (“*opsiwn o ran-ymddeoliad*”) means the option exercisable under regulation 72 (exercise of partial retirement option);

“paternity leave” (“*absenoldeb tadolaeth*”) means leave under regulation 4 or 8 of the Paternity and Adoption Leave Regulations 2002(30);

“pay period” (“*cyfnod tâl*”) means the period in respect of which a payment of pensionable pay is made;

“pension credit” (“*credyd pensiwn*”) means a credit under section 29(1)(b) of WRP 1999;

“pension credit member” (“*aelod â chredyd pensiwn*”) has the meaning given by regulation 30 (pension credit member);

“pension credit member’s account” (“*cyfrif aelod â chredyd pensiwn*”) has the meaning given in regulation 63 (establishment of pension credit member’s account);

“pension credit member’s pension” (“*pensiwn aelod â chredyd pensiwn*”) means a pension payable under regulation 114 (entitlement to pension credit member’s pension);

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(26) Relevant amendments were made to section 1 by the Pensions Act 2004 (c. 35), section 239 and by S.I. 2007/3014.

(27) Section 75A was inserted by the Employment Act 2002 (c. 22), section 3. It was amended by the Children and Families Act 2014 (c. 6), sections 118, 121 and 122 and the Work and Families Act 2006 (c. 18), Schedule 1, paragraph 33.

(28) Section 71 was substituted by the Employment Relations Act 1999. It was amended by section 118 of the Children and Families Act 2014 (c. 6), the Work and Families Act 2014 (c. 18), Schedule 1, paragraph 31 and the Employment Act 2002 (c. 22), section 17.

(29) S.I. 1999/3312 to which there are amendments not relevant to these Regulations.

(30) S.I. 2002/2788. Regulations 4 and 8 were amended by S.I. 2005/1114 and 2014/2112.



“pension credit rights” (*“hawliau credyd pensiwn”*) has the meaning given in section 124(1) of the Pensions Act 1995<sup>(31)</sup>;

“pension debit member” (*“aelod â debyd pensiwn”*), in relation to this scheme, means a person who is a member of this scheme whose benefits or future benefits under this scheme have been reduced under section 31 of WRPA 1999 (reduction of benefit under pension sharing order);

“pensionable pay” (*“tâl pensiynadwy”*) has the meaning given in regulation 26 (pensionable pay);

“pensionable public service” (*“gwasanaeth cyhoeddus pensiynadwy”*) means pensionable service under an existing scheme<sup>(32)</sup> or an existing public body pension scheme as defined in paragraph 1 of Schedule 2;

“pensioner member” (*“aelod-bensiynwr”*), in relation to this scheme, means a person who is entitled to the immediate payment of a retirement pension under this scheme;

“pension sharing order” (*“gorchymyn rhannu pensiwn”*) means any provision or order specified in section 28 of WRPA 1999<sup>(33)</sup>;

“personal pension scheme” (*“cynllun pensiwn arferol”*) means a personal pension scheme as defined in section 1 of PSA 1993 that is a registered pension scheme;

“PIA index adjustment” (*“addasiad mynegai DPC”*), in relation to the opening balance of added pension for any scheme year, means the amount by which the annual rate of a pension of an amount equal to the opening balance would have been increased in that year under PIA 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 financial year;

“protected member” (*“aelod a ddiogelir”*), in relation to the 1992 Scheme or the NFPS, has the meaning given in Schedule 2;

“provisional amount of deferred pension” (*“swm dros dro o bensiwn gohiriedig”*) has the meaning given in regulation 54 (provisional amount of deferred pension);

“qualifying service” (*“gwasanaeth cymwys”*) has the meaning given in regulation 66 (qualifying service);

“reference pay” (*“tâl cyfeirio”*), in relation to the pay of a retained or volunteer firefighter for any period, means the whole-time equivalent pensionable pay for that period of a regular firefighter employed in a similar role and with equivalent qualifying service;

“registered” (*“cofrestredig”*), in relation to a pension scheme, means registered under Chapter 2 of Part 4 (registration of pension schemes) of FA 2004;

“regular employment” (*“cyflogaeth reolaidd”*) means employment for at least 30 hours a week on average over a period of not less than 12 consecutive months beginning with the date on which the issue of the person’s capacity for employment arises;

“regular firefighter” (*“diffoddwr tân rheolaidd”*) means a person (P) employed (whether whole-time or part-time) by an authority—

- (a) as a firefighter, but not as a retained or volunteer firefighter,
- (b) on terms under which P is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting), and

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(31) 1995 c. 26. There are amendments to section 124(1) of that Act which are not relevant to these Regulations.

(32) See section 18(2) of the 2013 Act for the meaning of “existing scheme”.

(33) Section 28 was amended by the Civil Partnerships Act 2004 (c. 33), Schedule 27, paragraph 159 and Schedule 30, paragraph 1; the Children and Families Act 2014 (c. 6), section 18 and the Pensions Act 2008 (c. 30), section 128.

(c) otherwise than in a temporary capacity;

“the relevant last day” (“*y diwrnod olaf perthnasol*”) means—

(a) for a partially retired member, the day on which the partial retirement option was exercised, and

(b) otherwise, the member’s last day of pensionable service;

“reserve forces” (“*lluoedd wrth gefn*”) has the meaning given in section 1(2) of the Reserve Forces Act 1996<sup>(34)</sup>;

“reserve forces service leave” (“*absenoldeb gwasanaeth lluoedd wrth gefn*”) means absence from duty because of being called out or recalled for permanent service in Her Majesty’s armed forces pursuant to a call-out notice served, or a call-out or recall order made, under the Reserve Forces Act 1996 or absence during training required under section 22 or permitted under section 27 of that Act<sup>(35)</sup>;

“retained firefighter” (“*diffoddwr tân wrth gefn*”) means a person (P) employed by an authority—

(a) as a firefighter, but not as a regular firefighter or a volunteer firefighter,

(b) on terms under which P is, or may be, required to engage in fire-fighting or, without a break in continuity of such employment, may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),

(c) otherwise than in a temporary capacity, and

(d) who is obliged to attend at such times as the officer in charge considers necessary and in accordance with the orders that P receives;

“retirement account” (“*cyfrifymddeol*”) has the meaning given in regulation 59 (establishment of retirement account and other adjustments);

“retirement added pension” (“*pensiwn ychwanegol ymddeol*”) has the meaning given in regulation 60(3) (account to specify amount of retirement pension (active members));

“retirement amount of deferred pension” (“*swm y pensiwn gohiriedig ymddeol*”) has the meaning given in regulation 55(3) (retirement amount of deferred pension);

“retirement benefits” (“*buddion ymddeol*”) means benefits payable under Part 5 (retirement benefits);

“retirement earned pension” (“*pensiwn enilledig ymddeol*”) has the meaning given in regulation 60(2) (account to specify amount of retirement pension (active members));

“retirement index adjustment” (“*addasiad mynegai ymddeol*”), in relation to an amount of accrued pension, has the meaning given in regulation 33 (calculation of “retirement index adjustment”);

“retirement pension” (“*pensiwn ymddeol*”) means—

(a) in relation to a pensioner member who was an active member at the time of claiming a retirement pension, a retirement earned pension and a retirement added pension (if any);

(b) in relation to a pensioner member who was a deferred member at the time of claiming a retirement pension, the retirement amount of deferred pension;

“retirement PIA index adjustment” (“*addasiad mynegai DPC ymddeol*”), in relation to an amount of accrued pension, has the meaning given in regulation 34 (calculation of “retirement PIA index adjustment”);

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<sup>(34)</sup> 1996 c. 14.

<sup>(35)</sup> Section 27 was amended by the Armed Forces Act 2006 (c. 52), Schedule 17, paragraph 1.



“role” (*“rôl”*), in relation to a firefighter, means the role in which the firefighter is for the time being employed, being a role set out in “Fire and Rescue Services Rolemaps” issued by the National Joint Council for Local Authority Fire and Rescue Services in August 2005<sup>(36)</sup>;

“this scheme” (*“y cynllun hwn”*) means the scheme established by these Regulations;

“scheme actuary” (*“actiwari’r cynllun”*) means the actuary appointed by the Welsh Ministers under regulation 159 (appointment of scheme actuary and actuarial valuations);

“scheme employer” (*“cyflogwr cynllun”*) has the meaning given in regulation 15 (scheme employment);

“scheme employment” (*“cyflogaeth gynllun”*) has the meaning given in regulation 15 (scheme employment);

“scheme manager” (*“rheolwr cynllun”*), except where the context otherwise requires, has the meaning given in regulation 4 (scheme manager);

“scheme year” (*“blwyddyn gynllun”*) means a period of one year beginning with 1 April and ending with 31 March;

“sending scheme” (*“cynllun sy’n anfon”*) means a club scheme which pays a club transfer value;

“specified proportion” (*“cyfran benodedig”*) has the meaning given in regulation 98 (specified proportion);

“statutory pay” (*“tâl statudol”*) means—

- (a) statutory adoption pay within the meaning of section 171ZL(1) (entitlement) of the Social Security Contributions and Benefits Act 1992<sup>(37)</sup>,
- (b) statutory maternity pay within the meaning of section 164(1) (statutory maternity pay - entitlement and liability to pay) of the Social Security Contributions and Benefits Act 1992<sup>(38)</sup>,
- (c) ordinary statutory paternity pay within the meaning of section 171ZA(1) (entitlement: birth) or 171ZB(1) (entitlement: adoption) of the Social Security Contributions and Benefits Act 1992<sup>(39)</sup>, or
- (d) additional statutory paternity pay within the meaning of section 171ZEA(1) (entitlement to additional statutory paternity pay: birth) or 171ZEB(1) (entitlement to additional statutory paternity pay: adoption) of the Social Security Contributions and Benefits Act 1992<sup>(40)</sup>;

“survivor member” (*“aelod-oroeswr”*) has the meaning given in regulation 61 (establishment of survivor member’s account);

“surviving partner” (*“partner sy’n goroesi”*) has the meaning given in regulation 85 (meaning of “surviving partner”);

“surviving partner’s pension” (*“pensiwn partner sy’n goroesi”*) means a pension payable to a surviving partner under regulation 87 (surviving partner’s pension payable on death of active member), regulation 88 (surviving partner’s pension payable on death of deferred member), or regulation 89 (surviving partner’s pension payable on death of pensioner member);

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<sup>(36)</sup> A copy is available at [http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=326723e9-8192-4798-89bb-d152fb05fa5f&groupId=10180](http://www.local.gov.uk/c/document_library/get_file?uuid=326723e9-8192-4798-89bb-d152fb05fa5f&groupId=10180).

<sup>(37)</sup> 1992 c. 4. Section 171ZL was inserted by the Employment Act 2002 (c.22), section 4 and was amended by the Children and Families Act 2014 (c. 6), section 21 and by S.I. 2006/2012.

<sup>(38)</sup> Section 164 was amended by the Employment Act 2002 (c. 22), section 20(b), Schedule 8, paragraph 1 and Schedule 7, paragraph 6 and the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 12.

<sup>(39)</sup> Sections 171ZA and 171ZB were inserted by the Employment Act 2002, section 2. Subsections (1) of those sections were amended by the Work and Families Act 2006 (c. 18), Schedule 1, paragraphs 12 and 13.

<sup>(40)</sup> Sections 171ZEA and 171ZEB were inserted by the Work and Families Act 2006 (c. 18), sections 6 and 7.

“tax year” (“*blwyddyn dreth*”) means a period of one year which is the period of assessment for income tax purposes;

“total allocation amount” (“*cyfanswm y dyraniad*”), in relation to an amount of retirement pension, means the total amount of that pension allocated under Chapter 6 of Part 5 (retirement benefits);

“trade dispute” (“*anghydfod undebol*”) has the meaning given in section 218 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(41)</sup>;

“transfer payment” (“*taliad trosglwyddo*”) means a transfer value payment or a club transfer value payment;

“transfer value” (“*gwerth trosglwyddiad*”, “*gwerth trosglwyddo*”) has the meaning given in regulation 141 (interpretation in relation to Part 10);

“transfer value payment” (“*taliad gwerth trosglwyddiad*”) means payment of a transfer value;

“transferred pension” (“*pensiwn trosglwyddedig*”) means pension attributable to receipt of a transfer value payment;

“transition member” (“*aelod trosiannol*”) has the meaning given in paragraph 1 of Schedule 2;

“volunteer firefighter” (“*diffoddwr tân gwirfoddol*”) means a person (P) who carries out operational fire-fighting for an authority—

- (a) as a firefighter, but not as a regular firefighter or a retained firefighter,
- (b) on terms under which P is, or may be, required to engage in fire-fighting or may be required to perform other duties appropriate to P’s role as a firefighter (whether instead of, or in addition to, engaging in fire-fighting),
- (c) otherwise than in a temporary capacity, and
- (d) who is obliged to attend at such times as the officer in charge considers necessary and in accordance with the orders that P receives;

“weekly rate” (“*cyfradd wythnosol*”), in relation to a guaranteed minimum pension, has the meaning given in regulation 55(2) of the Occupational Pension Scheme (Contracting-out) Regulations 1996<sup>(42)</sup>.

## PART 2

### Governance

#### Scheme manager

**4.—**(1) An authority is responsible for managing and administering this scheme and any statutory scheme that is connected with it<sup>(43)</sup> in relation to any person for which it is the appropriate authority under these Regulations.

(2) The appropriate authority in relation to a person who—

- (a) is or has been a member of this scheme; or
  - (b) is entitled to any benefit in respect of a person who is or has been a member of this scheme,
- is the authority by whom the member was last employed whilst an active member of this scheme.

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<sup>(41)</sup> 1992 c. 52.

<sup>(42)</sup> S.I. 1996/1172. Regulation 55(2) was amended by S.I. 2014/560.

<sup>(43)</sup> See section 4(6) of the 2013 Act which sets out when statutory pension schemes are “connected”.

(3) The appropriate authority in relation to a pension credit member is the authority responsible for the pension debit member's pension account at the effective date of the pension sharing order.

(4) The appropriate authority is referred to in this scheme as the scheme manager.

### **Local pension boards: establishment**

**5.—**(1) Each scheme manager must establish a pension board ("a local pension board") responsible for assisting it—

- (a) to secure compliance with—
  - (i) these Regulations;
  - (ii) any other legislation relating to the governance and administration of this scheme and any connected scheme and to the provision of benefits under this scheme;
  - (iii) any requirements imposed by the Pensions Regulator in relation to this scheme and any connected scheme;
- (b) to ensure the effective and efficient local governance and administration of this scheme and any connected scheme.

(2) A scheme manager may determine the procedures applicable to a local pension board, including as to voting rights, the establishment of sub-committees and payment of expenses.

(3) A local pension board has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

### **Local pensions board: membership**

**6.—**(1) Subject to paragraphs (2) and (3) each scheme manager must determine—

- (a) the membership of the local pension board;
- (b) the manner in which members of the local pension board may be appointed and removed;
- (c) the terms of appointment of members of the local pension board, including the duration of their appointment.

(2) A local pension board must include an equal number, which is no less than 4, of employer representatives and member representatives<sup>(44)</sup> and for these purposes the scheme manager must be satisfied that a person to be appointed as—

- (a) an employer representative has the capacity to represent employers on the local pension board;
- (b) a member representative has the capacity to represent members on the local pension board.

(3) Throughout the period of appointment of a person appointed as a member of a local pension board to represent employers or members, as the case may be, a scheme manager must be satisfied that the member continues to have the capacity to represent employers or members, as the case may be, on a local pension board.

(4) A person who is to be appointed as a member of a local pension board by a scheme manager to represent employers or members, as the case may be, must provide the scheme manager with such information as the scheme manager reasonably requires for the purposes of paragraph (2).

(5) A person who is a member of a local pension board appointed to represent employers or members, as the case may be, must provide the scheme manager which made the appointment with such information as the scheme manager reasonably requires for the purposes of paragraph (3).

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<sup>(44)</sup> See section 5(6) of the Public Service Pensions Act 2013 for definitions of these terms.

(6) The scheme manager may appoint persons who are not members of the local pension board to be non-voting advisory members of the local pension board, who may, by invitation, attend meetings of the local pension board and any sub-committee of the local pension board.

(7) The number of non-voting advisory members of the local pension board must be less than each of the number of employer representatives and the number of member representatives.

(8) An advisory member of the local pension board is to hold and vacate office in accordance with the terms of that member's appointment.

(9) No member or officer of an authority responsible for the discharge of any function under these Regulations (apart from any function relating to a local pension board or the Firefighters' Pension Scheme Advisory Board for Wales) may be a member of a local pension board.

### **Local pension boards: conflict of interest**

7.—(1) Each scheme manager must be satisfied that any person to be appointed as a member of a local pension board does not have a conflict of interest<sup>(45)</sup>.

(2) A scheme manager must be satisfied from time to time that none of the members of a local pension board has a conflict of interest.

(3) A person who is to be appointed as a member of a local pension board by a scheme manager must provide that authority with such information as the authority reasonably requires for the purposes of paragraph (1).

(4) A person who is a member of a local pension board must provide the scheme manager with such information as that authority reasonably requires for the purposes of paragraph (2).

### **Local pension boards: guidance and advice**

8. A scheme manager must have regard to—

- (a) guidance issued by the Welsh Ministers in relation to local pension boards;
- (b) advice given by the Firefighters' Pension Scheme Advisory Board for Wales in relation to the effective and efficient administration and management of the scheme; and
- (c) codes of practice issued by the Pensions Regulator under section 90A (codes of practice: public service pensions schemes) of the Pensions Act 2004<sup>(46)</sup>.

### **Local pension boards: publication of information**

9.—(1) A scheme manager must publish the following information relating to its local pension board—

- (a) who the members of the board are;
  - (b) representation on the board of members of the scheme; and
  - (c) the matters falling within the board's responsibility.
- (2) A scheme manager must keep information published under paragraph (1) up-to-date.

### **Scheme advisory board: establishment**

10.—(1) There is to be a scheme advisory board ("the Firefighters' Pension Scheme Advisory Board for Wales").

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<sup>(45)</sup> See section 5(5) of the Public Service Pensions Act 2013 for the meaning of "conflict of interest".

<sup>(46)</sup> 2004 c. 35. Section 90A was inserted by the Public Service Pensions Act 2013, Schedule 4, paragraph 14.

(2) The Firefighters' Pension Scheme Advisory Board for Wales is responsible for providing advice, in response to a request from the Welsh Ministers, on—

- (a) the desirability of making changes to this scheme and any connected scheme; and
- (b) any other matter it considers relevant to the effective and efficient operation of this scheme.

(3) The Firefighters' Pension Scheme Advisory Board for Wales is also responsible for providing advice to scheme managers and local pension boards in relation to the effective and efficient administration and management of this scheme and any connected scheme.

(4) Subject to these Regulations, the Firefighters' Pension Scheme Advisory Board for Wales may determine its own procedures including as to voting rights, the establishment of sub-committees, the payment of reasonable attendance allowances and any reasonable expenses in connection with the discharge of its functions as the Board considers necessary.

#### **Scheme advisory board: membership**

**11.**—(1) The Firefighters' Pension Scheme Advisory Board for Wales is to consist of a chair and at least two, and no more than 12, persons to be appointed by the Welsh Ministers.

(2) When deciding whether to make an appointment under paragraph (1), the Welsh Ministers must have regard to the desirability of there being equal representation of persons representing the interests of scheme employers and persons representing the interests of members.

(3) A member of the Firefighters' Pension Scheme Advisory Board for Wales is to hold and vacate office in accordance with the terms of that member's appointment.

(4) The chair of the Firefighters' Pension Scheme Advisory Board for Wales may, with the agreement of the Board, appoint persons who are not members of the Board to be non-voting advisory members of the Board, who may, by invitation, attend meetings of the Board and any sub-committee of the Board.

(5) An advisory member of the Firefighters' Pension Scheme Advisory Board for Wales is to hold and vacate office in accordance with the terms of that member's appointment.

(6) The chair of the Firefighters' Pension Scheme Advisory Board for Wales may, with the agreement of the Board, appoint persons who are not members of the Board to be members of sub-committees of the Board.

(7) A member of a sub-committee of the Firefighters' Pension Scheme Advisory Board for Wales is to hold and vacate office in accordance with the terms of that member's appointment.

#### **Scheme advisory board: conflict of interest**

**12.**—(1) Before appointing any person to be a member of the Firefighters' Pension Scheme Advisory Board for Wales, the Welsh Ministers must be satisfied that the person does not have a conflict of interest<sup>(47)</sup>.

(2) The Welsh Ministers must be satisfied from time to time that none of the members of the Firefighters' Pension Scheme Advisory Board for Wales has a conflict of interest.

(3) A person who is to be appointed as a member of the Firefighters' Pension Scheme Advisory Board for Wales must provide the Welsh Ministers with such information as the Welsh Ministers reasonably require for the purposes of paragraph (1).

(4) A person who is a member of the Firefighters' Pension Scheme Advisory Board for Wales must provide the Welsh Ministers with such information as the Welsh Ministers reasonably require for the purposes of paragraph (2).

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<sup>(47)</sup> See section 7(5) of the Public Service Pensions Act 2013 for the meaning of "conflict of interest".

### **The Firefighters' Pension Scheme Advisory Board for Wales: guidance**

13. The Firefighters' Pension Scheme Advisory Board for Wales must have regard to guidance issued by the Welsh Ministers in relation to the exercise by the Board of its functions under these Regulations.

#### **Delegation**

14.—(1) The Welsh Ministers may delegate any functions under these Regulations, including this power to delegate.

(2) The scheme manager may delegate any functions under these Regulations, including this power to delegate, to such persons or employees of such person as may be authorised in that behalf by the scheme manager.

## **PART 3**

### **Scheme membership**

#### **CHAPTER 1**

##### **Eligibility for active membership**

#### **Scheme employment**

15.—(1) For the purposes of these Regulations, a person is in scheme employment if that person is employed as a firefighter by an authority and satisfies the requirement in paragraph (2) or paragraph (3).

(2) A person who took up employment on or after 1 April 2015 satisfies the requirement in this paragraph where that person's role on taking up employment includes—

- (a) resolving operational incidents; or
- (b) leading and supporting others in the resolution of operational incidents.

(3) A person who is a transition member satisfies the requirement in this paragraph.

(4) The employer of a person in scheme employment is referred to in these Regulations as the "scheme employer".

#### **Eligible persons**

16.—(1) For the purpose of this Part, an eligible person is a person who is eligible to be an active member of this scheme.

(2) A person who is in service in a scheme employment (P) is an eligible person in relation to that employment unless in relation to service in that employment—

- (a) P is a protected member of the 1992 Scheme or the NFPS; or
- (b) P is a member of any other pension scheme and the authority employing P pays contributions to that scheme in respect of P.

(3) P remains an eligible person whilst on reserve forces service leave.



## Service in two or more scheme employments

17. If a person is in service in two or more scheme employments, regulation 16 (eligible persons) applies separately in relation to each employment (whether or not the employment is with the same authority).

## CHAPTER 2

### Pensionable service

## Application of Chapter

18.—(1) This Chapter applies in relation to a continuous period of service in a scheme employment.

(2) If a person is in service in two or more scheme employments at the same time, this Chapter applies separately in relation to each of the employments (whether or not the employment is with the same authority).

## Interpretation of Chapter

19. In this Chapter—

“automatic re-enrolment date” (*“dyddiad ailgofrestru awtomatig”*), in relation to a person in service in a scheme employment, means a date determined under regulation 12 of the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(48)</sup>;

“continuous period of service” (*“cyfnod di-dor o wasanaeth”*), in relation to scheme employment, means a period of service in scheme employment disregarding any gap in service not exceeding five years;

“first eligible day of service” (*“diwrnod cymwys cyntaf o wasanaeth”*) means the day on which a person becomes an eligible person in relation to that service.

## Automatic enrolment

20.—(1) Where a person (P) who is in pensionable service<sup>(49)</sup> under the scheme moves from one scheme employer to another but remains in scheme employment, P continues in pensionable service under the scheme.

(2) A person (P) who is not in pensionable service under the scheme immediately before P’s first eligible day of service in a scheme employment begins pensionable service under this scheme on P’s first eligible day of service in that employment unless—

- (a) regulation 24 (opting out before the end of the first three months) applies; or
- (b) P is a transition member with continuity of service and paragraph (3) applies.

(3) This paragraph applies if—

- (a) P’s first eligible day of service in the scheme employment is the day after P’s closing date; and
- (b) on P’s closing date—
  - (i) P was in service in the same employment, and
  - (ii) P had opted out of the 1992 Scheme or the NFPS, as the case may be, in relation to that service.

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<sup>(48)</sup> S.I. 2010/772. Regulation 12 was amended by S.I. 2012/215.

<sup>(49)</sup> See section 37 of the 2013 Act for the meaning of “pensionable service”.

### **Opting into this scheme**

**21.—**(1) A person (P) who, in relation to a scheme employment, is an eligible person but is not in pensionable service under this scheme may opt to become an active member of this scheme in relation to service in that employment.

(2) The option under this regulation may only be exercised by notice to the scheme manager in a form required by the scheme manager (“opt-in notice”).

(3) A person who exercises the option under this regulation in relation to service in a scheme employment opts into this scheme in relation to service in that employment with effect from the date on which the opt-in notice is received by the scheme manager.

(4) The option under this regulation is taken to be exercised on that date.

(5) If P opts into this scheme in relation to an employment, P becomes an active member of this scheme in relation to that employment at the beginning of the first pay period beginning after the date on which the option is exercised or at such other time as the scheme manager considers appropriate.

### **Automatic re-enrolment**

**22.—**(1) This regulation applies if, on the automatic re-enrolment date, an eligible person (P) in relation to service in a scheme employment is not in pensionable service under this scheme in relation to service in that employment.

(2) On the automatic re-enrolment date, the scheme manager must enrol P in this scheme in relation to service in that employment if the employer is required under section 5 of the Pensions Act 2008<sup>(50)</sup> (automatic re-enrolment) to make arrangements for P to be an active member of a pension scheme.

### **Opting out of this scheme**

**23.—**(1) A person (P) opts out of this scheme in relation to service in a scheme employment if P opts not to be an active member of this scheme in relation to that service.

(2) P may only exercise the option by notice to the scheme manager in a form required by the scheme manager (“opt-out notice”).

(3) The option is taken to be exercised on the date on which the opt-out notice is received by the scheme manager.

### **Opting out before the end of the first three months**

**24.—**(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment before the end of three months after—

- (a) P’s first day of a continuous period of service in scheme employment; or
- (b) the automatic re-enrolment date.

(2) If paragraph (1)(a) applies, P is taken never to have been in pensionable service under this scheme in relation to that continuous period of service in scheme employment.

(3) If paragraph (1)(b) applies, P is taken not to have been in pensionable service under this scheme in relation to that period of service during the period referred to in paragraph (1)(b).

(4) This regulation does not require the scheme manager to pay P any additional amount which becomes payable by P in respect of national insurance contributions because P has not after all been an active member of this scheme during any period.

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(50) 2008 c. 30.

### **Opting out after the first three months**

**25.**—(1) This regulation applies if a person (P) opts out of this scheme in relation to a continuous period of service in scheme employment three months or more after P's—

- (a) first day of a continuous period of service in scheme employment; or
- (b) automatic re-enrolment date.

(2) If P exercises the option under paragraph (1)(a) or (b), P ceases to be in pensionable service under this scheme in relation to that continuous period of service in scheme employment—

- (a) on the first day of the first pay period beginning on or after the date on which the option is exercised; or
- (b) if the scheme manager considers that day inappropriate, on the first day of any later pay period which the scheme manager considers appropriate.

## **CHAPTER 3**

### **Pensionable pay**

#### **Pensionable pay**

**26.**—(1) For the purpose of calculating a member's pension or other benefits under this scheme, the member's pensionable pay is—

- (a) the member's pay received for the performance of the duties of the member's role except any allowance or emoluments paid to that member on a temporary basis;
- (b) the member's permanent emoluments (including, in the case of a retained firefighter, any retaining allowance);
- (c) the amount foregone where a member has agreed to surrender the right to receive any part of that member's pensionable pay in exchange for the provision by the employer of any non-cash benefit; and
- (d) the amount paid to the member for continued professional development which the scheme manager determines is pensionable.

(2) The payments in paragraph (1) do not include any payment made by an employer to a member who is on reserve forces service leave.

#### **Meaning of “assumed pensionable pay”**

**27.**—(1) For any period in which the circumstances specified in paragraph (2) apply to an active member of this scheme, the member is treated as receiving pensionable pay (“assumed pensionable pay”) equal to the pensionable pay that the member would have received if those circumstances had not applied.

(2) The circumstances are that the member is—

- (a) on secondment to a different employer under an arrangement providing for the member to continue to be an active member of this scheme in respect of the member's service although the member is paid for that member's service by the other employer;
- (b) on sick leave or injury leave on reduced pay or, where the member has paid the contributions required by regulation 120(2) (contributions during absence from work due to illness or injury), is not receiving pay;
- (c) receiving pay or statutory pay whilst on adoption leave, additional adoption leave, additional maternity leave, parental leave or additional paternity leave;
- (d) on ordinary adoption leave, ordinary maternity leave or paternity leave;

- (e) not receiving pay or statutory pay during part or all of the duration of the period of additional adoption leave, additional maternity leave or additional paternity leave and has paid member contributions in respect of that period;
- (f) on unpaid leave for a period that does not exceed five years, in circumstances that the scheme manager has agreed can count for the purposes of this paragraph, and has paid contributions required by regulation 120(4) (contributions during absence from work due to authorised absence);
- (g) absent on reserve forces service leave; or
- (h) absent due to a trade dispute and has paid contributions required by regulation 120(3) (contributions during absence from work due to trade dispute).

(3) Paragraph (2)(g) does not apply in respect of any period of service which qualifies the member for benefits under any occupational pension scheme in respect of that service.

(4) Where the circumstances in paragraph (2) apply to a member (P) who was employed as a retained firefighter or volunteer firefighter immediately before those circumstances applied and P's pensionable service for that period was 365 days or more, the amount of P's assumed pensionable pay is calculated by dividing the total amount of P's pensionable pay received for that service during the period of 365 days ending with the last day of continuous pensionable service before those circumstances applied, by 365 and multiplying by the number of days in which the circumstances in paragraph (2) applied.

(5) Where the circumstances in paragraph (2) apply to a member (P) who was employed as a retained firefighter or volunteer firefighter immediately before those circumstances applied and P's pensionable service for that period was less than 365 days, the amount of P's assumed pensionable pay is calculated by dividing the total amount of P's pensionable pay received for that service during that period of continuous pensionable service before those circumstances applied, by the number of days of that service and multiplying by the number of days in which the circumstances in paragraph (2) applied.

## CHAPTER 4

### Membership

#### Active membership

**28.** A person (P) is an active member of this scheme if—

- (a) P is in pensionable service under this scheme;
- (b) P is not in pensionable service whilst on unpaid sick leave or on unpaid child-related leave or on a trade dispute where P had been an active member immediately before that leave or trade dispute began;
- (c) P is on unpaid authorised absence and the scheme manager permits P to be treated as an active member; or
- (d) P is on reserve forces service leave and P was an active member immediately before that leave began.

#### Deferred membership

**29.** A person (P) is a deferred member of this scheme in relation to a continuous period of pensionable service if P—

- (a) ceases to be an active member of this scheme in relation to that period of service before P claims a pension under this scheme in respect of that period of pensionable service;
- (b) is not a pensioner member of this scheme in relation to that period of service; and

- (c) has at least three months qualifying service or a transfer value payment otherwise than from another occupational pension scheme has been accepted by this scheme in relation to P.

### **Pension credit member**

**30.** A person is a pension credit member of this scheme if that person has been given a pension credit in the scheme as a consequence of a pension debit created under section 29 of the WPRA 1999 in relation to a member of this scheme.

## **PART 4**

### **Pension accounts**

#### **CHAPTER 1**

##### **Preliminary**

### **Description of pension**

**31.** For the purpose of this Part, “description of pension” (*“disgrifiad o bensiwn”*) means any of the following—

- (a) earned pension;
- (b) transferred pension;
- (c) club transfer earned pension;
- (d) added pension.

#### **CHAPTER 2**

##### **Calculation of accrued pension**

### **Calculation of amount of accrued pension for purpose of deferment or retirement**

**32.—(1)** For the purpose of a retirement account of an active member who retires or partially retires, the amount of accrued pension is the sum of the amount of accrued earned pension calculated in accordance with paragraph (3) and the amount of accrued added pension calculated in accordance with paragraph (4).

(2) For the purpose of a deferred member’s account, the amount of accrued earned pension is calculated in accordance with paragraph (3).

(3) 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 sum of the opening balance of earned pension for the last active scheme year and the index adjustment for that opening balance;
- (b) the amount of earned pension accrued in the last active scheme year;
- (c) the sum of the opening balance of transferred pension (if any) for the last active scheme year and the index adjustment for that opening balance;
- (d) the amount of transferred pension (if any) for the last active scheme year;
- (e) the sum of 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
- (f) the amount of club transfer earned pension (if any) for the last active scheme year.

(4) The amount of accrued added pension is the sum of the following amounts specified in the added pension account as at the end of the last day of pensionable service—

- (a) the sum of the opening balance of added pension for the last active scheme year and the PIA index adjustment (if any) for that opening balance; and
- (b) the amount of accrued added pension for the last active scheme year.

## CHAPTER 3

### Calculation of adjustments

#### Calculation of “retirement index adjustment”

**33.**—(1) The retirement index adjustment for an amount of accrued earned pension is—

$$\text{Amount of accrued pension} \times \text{retirement index percentage}$$

where “retirement index percentage” (“canran mynegai ymddeol”) means the retirement index percentage calculated under paragraph (2) for accrued earned pension.

(2) The retirement index percentage is—

$$A \times B / 12$$

where—

A means—

- (i) for accrued club transfer earned pension, the in-service revaluation index that applies in relation to this scheme for the leaving year,
- (ii) for accrued earned pension other than club transfer earned pension, the index adjustment that applies in relation to this scheme for the leaving year,

B is the number of complete months in the period between the beginning of the leaving year and the end of the relevant last day.

(3) For the purposes of this regulation, “complete month” (“*mis cyflawn*”) includes an incomplete month that consists of at least 16 days.

#### Calculation of “retirement PIA index adjustment”

**34.**—(1) The retirement PIA index adjustment for an amount of accrued added pension is calculated in accordance with paragraph (2).

(2) The retirement PIA index adjustment is the amount by which the annual rate of a pension of an amount equal to the amount of accrued added pension would have been increased in the leaving year under PIA 1971 if—

- (a) that pension were eligible to be so increased; and
- (b) the beginning date for that pension were the day after the relevant last day.

#### Determination of “the age addition”

**35.**—(1) This regulation applies in relation to every scheme year in which an active member’s account and an active member’s added pension account, if any, is open that is subsequent to the scheme year in which the member reaches normal pension age under this scheme, and that is not the scheme year in which the account is established under this Part.



(2) At the beginning of the scheme year, for each description of pension, the scheme manager, having regard to actuarial guidance, must determine the age addition to be awarded for that scheme year by reference to the opening balance of that description of pension for the previous scheme year.

(3) In these Regulations, “the age addition” (“*yr ychwanegiad oedran*”) means an additional amount of pension determined by reference to the proportion of the previous scheme year for which a member had reached normal pension age under this scheme.

#### **Determination of “the assumed age addition”**

**36.**—(1) This regulation applies on the establishment of a deferred member’s account or retirement account in respect of a member who does not have an active member’s account in connection with another scheme employment.

(2) The scheme manager, having regard to actuarial guidance, must determine the assumed age addition for the amount of accrued earned pension and accrued added pension (if any) specified in that account.

(3) In these Regulations “the assumed age addition” (“*yr ychwanegiad oedran tybiedig*”) means—

- (a) for an amount of accrued earned pension not attributable to a transferred pension, the age addition that would have been awarded for accrued earned pension if the member had not left pensionable service or exercised the option to partially retire in the leaving year, determined by reference to the proportion of the leaving year for which the member was an active member of this scheme who had reached normal pension age under this scheme;
- (b) for an amount of accrued earned pension attributable to a transferred pension, the age addition that would have been awarded for transferred pension if the member had not left pensionable service or exercised the option to partially retire in the leaving year, determined by reference to the proportion of the leaving year for which the member was an active member of this scheme who had reached normal pension age under this scheme;
- (c) for an amount of accrued added pension, the age addition that would have been awarded for added pension if the member had not left pensionable service or exercised the option to partially retire in the leaving year, determined by reference to the proportion of the leaving year for which the member was an active member of this scheme who had reached normal pension age under this scheme.

### **CHAPTER 4**

#### **Pension accounts: general**

##### **Establishment of pension accounts: general**

**37.**—(1) The scheme manager must establish and maintain one or more pension accounts for each member of this scheme in accordance with this Part.

(2) A pension account—

- (a) may be kept in any form which 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, to the amount actually so specified.

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

**38.—**(1) Except as otherwise provided in this regulation, the scheme manager must close all pension accounts relating to a member of this scheme if—

- (a) a transfer payment is made in respect of the member's accrued rights under this scheme; or
- (b) all member contributions are refunded to the member under regulation 125 (refund of all member contributions and payments for added pension made by member).

(2) Paragraph (1) does not require the scheme manager to close an account that includes amounts to which the transfer payment does not relate or is not attributable.

(3) An account that is not closed because of paragraph (2) must be adjusted in such manner as the scheme manager considers appropriate to reflect the extinguishment of rights under this scheme<sup>(51)</sup>.

(4) Paragraph (1)(a) does not require the scheme manager to close a pension credit member's account if the transfer payment is made in respect of a member who is both—

- (a) a pension credit member of this scheme; and
- (b) an active member, deferred member or pensioner member of this scheme.

## **CHAPTER 5**

### **Active member's account**

#### **Application of Chapter**

**39.—**(1) This Chapter applies in relation to a continuous period of pensionable service under this scheme.

(2) For a person who is an active member of this scheme in relation to two or more continuous periods of pensionable service at the same time, this Chapter applies separately in relation to each of those periods of service.

#### **Establishment of active member's account**

**40.—**(1) The scheme manager must establish a pension account for a member who is in pensionable service from the day on which the member begins pensionable service.

(2) For the purposes of these Regulations, an account established under paragraph (1) is called an active member's account.

#### **Receipt of a transfer value payment**

**41.—**(1) This regulation applies if a transfer value payment is received from another pension scheme (other than a connected scheme) in relation to an active member of this scheme.

(2) On receiving the transfer value payment, the scheme manager must credit the active member's account with the amount of transferred pension calculated under regulation 152(2) (amount of transferred pension).

#### **Receipt of a club transfer value payment**

**42.—**(1) This regulation applies if a club transfer value payment is received from another club scheme in relation to an active member of this scheme.

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<sup>(51)</sup> Regulation 125 provides for extinguishment of rights following the refund of all member contributions and payments for added pension made by the member. Regulation 147 (effect of transfers-out) provides for extinguishment of rights following the making of a transfer payment.

(2) On receiving the club transfer value payment, the scheme manager must credit the active member's account with an amount of club transfer earned pension calculated under regulation 154(2) (amount of club transfer earned pension).

### **Amount of pension for a scheme year**

**43.—**(1) This regulation applies in relation to every scheme year in which an active member's account is open.

(2) The active member's account must specify the amount of—

- (a) earned pension (if any) for the scheme year;
- (b) transferred pension (if any) for the scheme year; and
- (c) club transfer earned pension (if any) from each sending scheme for the scheme year.

(3) The amount is—

- (a) for earned pension, 1/61.4th of the member's pensionable pay received for that year for the scheme employment in respect of which that member's account is established;
- (b) for earned pension, 1/61.4th of the member's assumed pensionable pay for the scheme year where the member pays the contributions required by—
  - (i) paragraphs (3) and (4) of regulation 120 (contributions during absence from work due to trade dispute or authorised unpaid absence),
  - (ii) paragraph (1) of regulation 121 (contributions during absence from work on reserve forces service leave), or
  - (iii) paragraph (3) of regulation 122 (contributions during child-related leave);
- (c) for earned pension, 1/61.4th of the member's assumed pensionable pay during the member's absence due to illness or injury for the period in respect of which the member pays the contributions required by paragraph (2) of regulation 120 (contributions during absence from work due to illness or injury);
- (d) for earned pension, 1/61.4th of the member's assumed pensionable pay whilst the member is absent on ordinary adoption leave, ordinary maternity leave or paternity leave;
- (e) for transferred pension, the amount which the member is entitled to count under regulation 152(2) (amount of transferred pension) for that year; and
- (f) for club transfer earned pension, the amount of all club transfer values received in relation to the member in that year as calculated under regulation 154(2) (amount of club transfer earned pension).

### **Opening balance, index adjustment and age addition**

**44.—**(1) This regulation applies in relation to every scheme year in which an active member's account is open other than the scheme year in which that account is established.

(2) The active member's account must specify —

- (a) the opening balance of earned pension for the scheme year and the index adjustment for that opening balance, and if applicable, the age addition awarded at the beginning of the scheme year;
- (b) the opening balance of club transfer earned pension (if any) for the scheme year and the index adjustment for that opening balance and if applicable, the age addition awarded at the beginning of the scheme year;

- (c) the opening balance of transferred pension (if any) for the scheme year and the index adjustment for that opening balance and if applicable, the age addition awarded at the beginning of the scheme year.
- (3) In these Regulations—
  - “opening balance” (“*balans agoriadol*”) in relation to a description of pension, other than added 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 that scheme year; and
    - (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,
      - (ii) the amount of that pension for the previous scheme year as at the end of the previous scheme year, and
      - (iii) if applicable, the age addition awarded at the beginning of the previous scheme year.

### **Ill-health award ceases to be payable**

**45.**—(1) This regulation applies when an ill-health award ceases to be payable to a person under regulation 78 (consequences of review) and the pensioner member re-enters pensionable service.

- (2) The scheme manager must—
  - (a) close the retirement account;
  - (b) re-establish the active member’s account and credit it with an amount equal to the annual rate of lower tier ill-health pension payable when the ill-health award was first made; and
  - (c) make entries in the active member’s account as if, during the gap in pensionable service, the member—
    - (i) was in pensionable service under this scheme, but
    - (ii) received no pensionable pay.

### **Closure and re-establishment of active member’s account**

**46.**—(1) The scheme manager must close an active member’s account in relation to a period of service when the scheme manager establishes in relation to that period of service—

- (a) a deferred member’s account under Chapter 7 (deferred member’s account); or
- (b) a retirement account under Chapter 8 (retirement account).

(2) The scheme manager must re-establish an active member’s account under this Chapter if the scheme manager closes a deferred member’s account under Chapter 7.

(3) Where an active member has more than one active member’s account and ceases to be in pensionable service in respect of service in one scheme employment without having qualifying service for a period of three months in respect of that account, the active member’s account for that employment must be closed and the benefits in that account must be aggregated with the other active member’s account.

(4) If the active member has more than one active member’s account after the account mentioned in paragraph (3) has been closed, the member may choose the active member’s account with which the benefits from the closed account are to be aggregated.

(5) If the active member fails to make the selection mentioned in paragraph (4), the scheme manager may choose the active member's account with which the benefits from the closed account are to be aggregated.

## CHAPTER 6

### Added pension account

#### Establishment of added pension account

**47.—**(1) A pension account must be established for each active member (P) who makes an added pension election.

(2) If P is an active member in relation to more than one scheme employment, only one added pension account is to be opened.

(3) For the purpose of these Regulations, an account established under paragraph (1) is called an added pension account.

#### Account to specify amount of added pension

**48.—**(1) This regulation applies in relation to every scheme year in which an added pension election has effect.

(2) The added pension account must specify in relation to any added pension payments made in that scheme year the amount of added pension determined by the scheme manager under paragraph 11 or under paragraph 14 of Schedule 1 (payments for added pension) to be credited in respect of that scheme year.

#### Account to specify opening balance and PIA index adjustment

**49.—**(1) This regulation applies in relation to every scheme year in which an added pension account is open other than the scheme year in which the account is established.

(2) The account must specify—

- (a) the opening balance of added pension for the scheme year and the PIA index adjustment for that opening balance;
- (b) if applicable, the age addition awarded at the beginning of the scheme year.

(3) The “opening balance” (“*balans agoriadol*”) of added pension—

- (a) for the scheme year immediately following the scheme year in which the added pension account is established, means the amount of added 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—
  - (i) the opening balance of added pension for the previous scheme year,
  - (ii) the PIA index adjustment (if any) for that opening balance,
  - (iii) if applicable, the age addition awarded at the beginning of the previous scheme year, and
  - (iv) the amount of added pension for the previous scheme year as at the end of the previous scheme year.

#### Closure and transfer of added pension account

**50.—**(1) Where an active member (P) has an added pension account, the added pension account must remain open until—

- (a) P has claimed a retirement pension and the amount of added pension is transferred to the retirement account or the deferred member's account; or
- (b) a transfer value payment is made in respect of P's rights to the accrued added pension; or
- (c) where a transfer of entries referred to in paragraph (2) has been completed.

(2) Where a scheme manager has provided a certificate under regulation 155 (requirement for scheme manager to provide a certificate) in respect of an added pension account, the new scheme manager must establish an added pension account and transfer the entries from that certificate to that account.

### **Ill-health pension ceases to be payable**

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

- (a) an added pension is payable with an ill-health award; and
- (b) the ill-health award ceases to be payable under regulation 78 (consequences of review).

(2) The added pension account must be re-established and credited with an amount equal to the annual rate of added pension paid to the pensioner member in the last scheme year before the payment of the ill-health award to the member ceased.

## **CHAPTER 7**

### **Deferred member's account**

#### **Application of Chapter**

**52.—**(1) This Chapter applies in relation to a continuous period of pensionable service under this scheme.

(2) For a person who is a deferred member of this scheme in relation to two or more continuous periods of pensionable service, this Chapter applies separately in relation to each of those periods of service.

#### **Establishment of deferred member's account**

**53.—**(1) This regulation applies when an active member of this scheme becomes a deferred member of this scheme.

(2) The scheme manager must—

- (a) close the active member's account for that period of service; and
- (b) establish a pension account for the deferred member for that period of service.

(3) For the purpose of these Regulations, an account established under paragraph (2)(b) is called a deferred member's account.

#### **Provisional amount of deferred pension**

**54.—**(1) The deferred member's account must specify the provisional amount of deferred pension.

(2) The provisional amount of deferred pension is the sum of—

- (a) the amount of accrued earned pension calculated under regulation 32(3) (calculation of amount of accrued pension for purposes of deferment or retirement) ("accrued amount");
- (b) the retirement index adjustment for the accrued amount; and
- (c) the assumed age addition (if any) for the accrued amount.



(3) The retirement index adjustment is not applied in relation to the amount of accrued earned pension if a transfer payment in respect of the member's rights to that accrued earned pension was made before the end of the last active scheme year.

(4) The assumed age addition applies in relation to a member who reaches normal pension age under this scheme not less than one month before the last day of pensionable service.

### **Retirement amount of deferred pension**

**55.**—(1) This regulation applies when a deferred member of this scheme becomes entitled to the immediate payment of a retirement pension for a period of service.

(2) The deferred member's account must specify the retirement amount of deferred pension.

(3) The retirement amount of deferred pension is the sum of—

- (a) the amount of any accrued added pension transferred to the deferred member's account,
- (b) the retirement PIA index adjustment for the accrued added pension,
- (c) the assumed age addition (if any) for the accrued added pension, and
- (d) the provisional amount of deferred pension.

(4) For the retirement amount of deferred pension, the deferred member's account must specify—

- (a) the early payment reduction (if any);
- (b) the commutation amount (if any); and
- (c) the total allocation amount (if any).

### **Adjustment of account after early payment of deferred pension ceases**

**56.** When a deferred member who has received the early payment of a deferred pension under regulation 76 (early payment of retirement pension to deferred member) ceases to be entitled to the early payment of the deferred pension under regulation 78(7) (consequences of review), the scheme manager must make the necessary adjustments to the deferred member's account.

### **Account established after ill-health award ceases to be payable**

**57.** If a lower tier ill-health pension ceases to be payable to a person (P) under regulation 78 (consequences of review) and P does not re-enter pensionable service—

- (a) a deferred member's account must be established; and
- (b) that account must be credited with an amount equal to the annual rate of the lower tier ill-health pension payable immediately before the lower tier ill-health pension ceased to be payable.

### **Closure of deferred member's account after gap in pensionable service not exceeding five years**

**58.**—(1) This regulation applies when a deferred member of this scheme re-enters pensionable service under this scheme after a gap in pensionable service not exceeding five years.

(2) The scheme manager must—

- (a) close the deferred member's account in relation to that period of service and treat the deferred member's account as if it were never established;
- (b) re-establish the active member's account under Chapter 5 in relation to that period of service; and

(c) make entries in the active member's account as if, during the gap in pensionable service, the member—

- (i) was in pensionable service under this scheme, but
- (ii) received no pensionable pay.

(3) Where a deferred member had more than one deferred member's account which has been opened within five years of the date in paragraph (1) the member may within three months of the date of re-entering scheme employment select which deferred member's account is to be closed.

(4) If the deferred member fails to make the selection mentioned in paragraph (3), the scheme manager must select which deferred member's account is to be closed.

## CHAPTER 8

### Retirement account

#### **Establishment of retirement account and other adjustments**

**59.**—(1) This regulation applies in relation to a continuous period of pensionable service under this scheme.

(2) When an active member of this scheme becomes entitled to the immediate payment of a retirement pension or an ill-health award, the scheme manager must—

- (a) close all the active member's accounts for that member and any added pension account; and
- (b) establish an account for the pensioner member for that period of service.

(3) When an active member of this scheme exercises the partial retirement option and becomes entitled under regulation 67(1) (entitlement to retirement pension) to the immediate payment of a retirement pension, the scheme manager must—

- (a) close the active member's account for the period of earlier service;
- (b) establish an account for the pensioner member for that period of earlier service;
- (c) close any added pension account and transfer the amount of accrued added pension to the retirement account; and
- (d) establish a new active member's account under Chapter 5 for the member's continuing service as if the first day of pensionable service in the scheme employment is the day after the option date.

(4) When a deferred member becomes entitled to the immediate payment of a retirement pension, the scheme manager must—

- (a) close any added pension account; and
- (b) transfer the amount of accrued added pension (if any) to the deferred member's account.

(5) For the purpose of these Regulations, an account established for a pensioner member under paragraph (2)(b) or (3)(b) is called a retirement account.

(6) In this regulation—

“continuing service” (“*gwasanaeth parhaus*”) means pensionable service that continues following the exercise of the partial retirement option in regulation 72 (exercise of partial retirement option) after the option date;

“option date” (“*dyddiad opsiwn*”) means the date on which the partial retirement option is exercised and the member becomes entitled to the immediate payment of a retirement pension;

“period of earlier service” (“*cyfnod o wasanaeth cynharach*”) means the continuous period of pensionable service ending on the option date.

### **Account to specify amount of retirement pension (active members)**

**60.**—(1) The retirement account must specify, for accrued earned pension and accrued added pension, the amount of that retirement pension.

(2) The amount of retirement earned pension is the sum of—

- (a) the amount of the accrued earned pension calculated under regulation 32(3) (calculation of amount of accrued pension for purpose of deferment or retirement) (“accrued amount”);
- (b) the retirement index adjustment for the accrued amount; and
- (c) the assumed age addition (if any) for the accrued amount.

(3) The amount of any retirement added pension is the sum of—

- (a) the amount of the accrued added pension calculated under regulation 32(4) (calculation of amount of accrued pension for purpose of deferment or retirement);
- (b) the retirement PIA index adjustment for the accrued added pension; and
- (c) the assumed age addition (if any) for the accrued added pension.

(4) For the amount of retirement earned pension and the amount of retirement added pension, the retirement account must specify—

- (a) the early payment reduction (if any);
- (b) the commutation amount (if any); and
- (c) the total allocation amount (if any).

(5) The assumed age addition applies in relation to a member who reaches normal pension age under this scheme at least one month before the last day of pensionable service.

## **CHAPTER 9**

### **Pension accounts for survivor members**

#### **Establishment of survivor member’s account**

**61.**—(1) The scheme manager must establish a pension account for each person who is entitled to a pension under this scheme as a surviving partner or eligible child following the death of an active member, deferred member or pensioner member.

(2) The scheme manager must—

- (a) close the active member’s account or the deferred member’s account or the retirement account (as the case may be) and the added pension account (if any); and
- (b) establish a pension account for each survivor member.

(3) For the purpose of these Regulations—

- (a) a person entitled to a pension in the circumstances mentioned in paragraph (1) is called a survivor member; and
- (b) an account established under paragraph (2)(b) is called a survivor member’s account.

#### **Amount of pension payable to survivor member**

**62.** The survivor member’s account must be credited with an amount equal to the annual rate of pension payable to the survivor member calculated in accordance with the appropriate regulation in Chapter 2 (pensions for surviving partners) or Chapter 3 (pensions for eligible children) of Part 6 (death benefits), as the case may be, which confers the pension on the survivor member.

## CHAPTER 10

### Pension accounts for pension credit members

#### Establishment of pension credit member's account

**63.**—(1) The scheme manager must establish a pension account for each pension credit member of this scheme.

(2) If a pension credit member has more than one pension credit derived from two or more pension debit members, the scheme manager must establish a pension credit member's account in relation to each pension debit member.

(3) The pension credit member's account must specify the amount of credited pension, and for that amount, the commutation amount (if any).

(4) On the establishment of the pension credit member's account, the accounts established under this Part for the pension debit member must be reduced by the relevant amount.

(5) For the purpose of these Regulations, an account established for a pension credit member under paragraph (1) is called a pension credit member's account.

(6) In this regulation—

“amount of credited pension” (*“swm y pensiwn a gredydwyd”*) means an amount equal to the pension credit calculated in accordance with regulations made under paragraph 5(b) of Schedule 5 (pension credits: mode of discharge) to WRP 1999;

“relevant amount” (*“swm perthnasol”*) means the amount that the scheme manager, after consultation with the scheme actuary, considers appropriate, having regard to—

- (a) the cash equivalent that would have been payable under Chapter 2 of Part 4A (requirements relating to pension credit benefit: transfer values) of PSA 1993<sup>(52)</sup> in respect of the pension credit member's right to benefits under this scheme attributable (directly or indirectly) to the pension credit; and
- (b) the provisions of sections 29 (creation of pension credits and debits) and 31 (reduction of benefit) of WRP 1999.

#### Other pension accounts

**64.** If a pension credit member of this scheme is also an active member, deferred member, pensioner member or survivor member of this scheme, the scheme manager must establish a pension credit member's account in addition to any other account established for the member under this Part.

## PART 5

### Retirement benefits

#### CHAPTER 1

##### Interpretation

#### Application of Part

**65.** This Part applies in relation to retirement benefits payable in respect of a continuous period of pensionable service under this scheme.

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(52) Part 4A was inserted by the Welfare Reform and Pensions Act 1999 (c. 30), section 37.

## Qualifying service

66.—(1) In these Regulations, in relation to a member's pension account, "qualifying service" ("gwasanaeth cymwys") means the total of—

- (a) any pensionable service under this scheme in relation to the same pension account;
- (b) if a transfer value payment has been accepted under Part 10 (transfers) in respect of a member's accrued rights under another occupational pension scheme, the member's period of pensionable service under that scheme; and
- (c) for a transition member with continuity of service, subject to paragraphs (2), (3), (4) and (5), the member's pensionable service reckonable under rule F1(53) (reckoning of and certificates as to pensionable service) of the 1992 Scheme (if any) and the member's qualifying service under the NFPS (if any).

(2) Where a transition member has more than one active member's account and was a member of the 1992 Scheme, the pensionable service reckonable under rule F1 of the 1992 Scheme must be added to the pensionable service for the active member's account in respect of which the scheme employment is the most similar to the employment which was pensionable under the 1992 Scheme.

(3) Where a transition member has more active member's accounts than the number of contracts of employment in respect of which that member was a member of the NFPS, the qualifying service under the NFPS must be added to the pensionable service for the active member's account in respect of which the scheme employment is most similar to the employment which was pensionable under the NFPS.

(4) Where a transition member was a member of the 1992 Scheme and the NFPS or had two or more contracts of employment in respect of which that member was a member of the NFPS, the pensionable service reckonable under rule F1 of the 1992 Scheme or the qualifying service under the NFPS, as the case may be, must be added to the pensionable service for the active member's account in respect of which the scheme employment is most similar to the employment which was pensionable under the 1992 Scheme or the NFPS.

(5) If the scheme manager is not certain which service pensionable under the 1992 Scheme or qualifying service under the NFPS is the most similar to the scheme employment for a particular pension account, the member may decide which pensionable service under the 1992 Scheme or qualifying service under the NFPS is to be added to the pensionable service in relation to a member's pension account and notify the scheme manager by written notice, in a form required by the scheme manager.

(6) None of the following counts as qualifying service—

- (a) any pensionable service under this scheme in respect of which a person's rights under this scheme are extinguished;
- (b) any pensionable service under the 1992 Scheme or the NFPS in respect of which a person's rights under that scheme are extinguished;
- (c) any unauthorised absence from scheme employment.

## CHAPTER 2

### Retirement benefits

## Entitlement to retirement pension

67.—(1) Subject to paragraph (2), a member of this scheme (P) is entitled to the immediate payment of a retirement earned pension under this scheme if—

(53) Rule F1 of the 1992 Scheme as it has effect in Wales has been amended by S.I. 2006/1672 (W. 160), 2007/1074 (W. 112) and 2014/3242 (W. 329).

- (a) P—
  - (i) has reached the age of 55,
  - (ii) has at least three months qualifying service,
  - (iii) has claimed payment of a retirement pension, and
  - (iv) is no longer employed in a scheme employment and so is not entitled to be an active member of this scheme; or
- (b) P has exercised the partial retirement option.

(2) Where a member is entitled to an ill-health award, the requirement in paragraph (1)(a)(i) does not apply to that member.

(3) On becoming entitled to the immediate payment of a retirement earned pension, P is entitled to immediate payment of a retirement added pension if P had an added pension account in this scheme before becoming so entitled.

(4) The claim for payment of a retirement pension must be made by notice to the scheme manager in a form required by the scheme manager and must be given before the date on which the first payment of the retirement pension is paid.

#### **Annual rate of retirement pension (active members)**

**68.**—(1) This regulation applies when an active member of this scheme becomes entitled to the immediate payment of a retirement pension.

(2) The annual rate of a retirement pension payable on the day following the last day of pensionable service to a member to whom this regulation applies is calculated by adding the total of sub-paragraphs (a), (b) and (c)—

- (a) the amount derived by—
  - (i) taking the amount of retirement earned pension specified in the member's retirement account,
  - (ii) subtracting the early payment reduction (if any), specified in that account in relation to that amount,
  - (iii) subtracting the commutation amount (if any) specified in that account in relation to that amount, and
  - (iv) subtracting the total allocation amount (if any) specified in that account in relation to that amount;
- (b) the amount derived by—
  - (i) taking the amount of retirement added pension (if any) specified in the member's retirement account,
  - (ii) subtracting the early payment reduction (if any), specified in that account in relation to that amount,
  - (iii) subtracting the commutation amount (if any) specified in that account in relation to that amount, and
  - (iv) subtracting the total allocation amount (if any) specified in that account in relation to that amount;
- (c) the amount of the higher tier ill-health pension (if any) awarded to the member under regulation 74(2)(entitlement to lower tier ill-health pension and higher tier ill-health pension).



### **Annual rate of retirement pension (deferred members)**

**69.**—(1) This regulation applies when a deferred member of this scheme becomes entitled to the immediate payment of a retirement pension.

(2) The annual rate of a retirement pension payable to a member to whom this regulation applies is calculated by subtracting from the retirement amount of deferred pension specified in the deferred member's account—

- (a) the early payment reduction (if any), specified in that account in relation to that amount;
- (b) the commutation amount (if any) specified in that account in relation to that amount;
- (c) the total allocation amount (if any) specified in that account in relation to that amount.

### **Early payment reduction**

**70.**—(1) This regulation applies when an actuarial reduction is to be applied when calculating the annual rate of pension to be payable to an active member who has not reached normal pension age or to a deferred member who has not reached deferred pension age.

(2) An active member (A) may claim a retirement pension to be paid after A has reached the age of 55 and before A has reached normal pension age.

(3) The actuarial reduction to be applied in a case falling in paragraph (2) is calculated in accordance with actuarial guidance which reduces the pension on the basis that A had not reached normal pension age. The actuarial guidance must have regard to actuarial neutrality compared to the present value of a pension payable at normal pension age, with future increases between the date of A's early retirement and normal pension age being in line with increases under the index adjustment.

(4) A deferred member (D) may claim a retirement pension to be paid after D has reached the age of 55 and before D has reached deferred pension age.

(5) The actuarial reduction to be applied in a case falling in paragraph (4) is in accordance with actuarial guidance which reduces the pension on the basis that D had not reached deferred pension age. The actuarial guidance must have regard to actuarial neutrality compared to the present value of a pension payable at deferred pension age, with future increases between the date of D's early retirement and deferred pension age being in line with increases under PIA 1971.

### **Employer initiated retirement**

**71.**—(1) Where an active member who has attained the age of 55 or over but has not attained normal pension age is dismissed by an employer from a scheme employment by reason of business efficiency or whose employment is terminated by mutual consent on the grounds of business efficiency and the employer makes the determination in paragraph (2), that member's pension is calculated in accordance with regulation 68 (annual rate of retirement pension (active members)) without the early payment reduction.

(2) An employer may only pay a retirement pension of the amount mentioned in paragraph (1) in the circumstances mentioned in that paragraph where the employer determines that a retirement pension awarded on that basis would assist the economical, effective and efficient management of its functions having taken account of the costs likely to be incurred in the particular case.

## **CHAPTER 3**

### **Partial retirement benefits**

#### **Exercise of partial retirement option**

**72.**—(1) This regulation applies to an active member of this scheme (P) in relation to a continuous period of pensionable service who—

- (a) is aged at least 55; and
  - (b) would be entitled to the immediate payment of a retirement pension in relation to that period of service if P left pensionable service and claimed payment of the pension.
- (2) P may opt to continue in pensionable service under this scheme but claim payment of the whole of P's accrued pension in relation to the pensionable service rendered before the exercise of the partial retirement option.
- (3) Where P has more than one active member's account, the partial retirement option may be exercised in respect of some or all of P's active member's accounts.
- (4) The partial retirement option may only be exercised by notice to the scheme manager ("option notice") in a form required by the scheme manager and must be given before the date on which the first payment of the retirement pension is claimed.
- (5) For the purpose of these Regulations, the partial retirement option is taken to be exercised on such date as the member and the scheme manager agree.
- (6) An option notice must specify that P claims the whole of P's pension accrued in respect of P's active member's account in respect of the earlier service of that scheme employment.

#### **Annual rate of retirement pension after exercise of partial retirement option**

- 73.—**(1) An active member of this scheme (P) who exercises the partial retirement option is entitled to the immediate payment of a retirement pension.
- (2) The annual rate of a retirement pension is calculated under regulation 68 (annual rate of retirement pension (active members)) by reference to the amount of that description of retirement earned pension and retirement added pension (if any) specified in the member's retirement account.
- (3) For the purposes of this Part, where a member exercises the partial retirement option, that member's last day of pensionable service in relation to the pensionable service in respect of which the partial retirement option is exercised is the day on which the member exercised the partial retirement option.

### **CHAPTER 4**

#### **Ill-health benefits**

#### **Entitlement to lower tier ill-health pension and higher tier ill-health pension**

- 74.—**(1) An active member who has not reached normal pension age is entitled to immediate payment of a lower tier ill-health pension if the following conditions are satisfied—
- (a) in the opinion of an IQMP, the member is incapable of performing any of the duties of the role in which the member was last employed because of incapacity of mind or body and this incapacity will continue until normal pension age;
  - (b) the member has at least three months of qualifying service;
  - (c) consequent on the incapacity in sub-paragraph (a), the member has been dismissed or retired from scheme employment; and
  - (d) the scheme manager has determined that the member is entitled to a lower tier ill-health pension.
- (2) An active member is entitled to immediate payment of a higher tier ill-health pension in addition to the lower tier ill-health pension if the following conditions are satisfied—
- (a) in the opinion of an IQMP, the member is incapable of undertaking regular employment because of incapacity of mind or body and this incapacity will continue until normal pension age;

- (b) the member has at least five years of qualifying service;
- (c) the member is entitled to a lower tier ill-health pension; and
- (d) the scheme manager has determined that the member is entitled to a higher tier ill-health pension.

(3) In these Regulations, an “ill-health award” (“*dyfarniad afiechyd*”) means the entitlement to the payment of a lower tier ill-health pension, and in cases where the member is also entitled to a higher tier ill-health pension, the payment of a higher tier ill-health pension.

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

**75.**—(1) The annual rate of a lower tier ill-health pension and of a higher tier ill-health pension is calculated as follows.

(2) The annual rate of a lower tier ill-health pension is calculated in accordance with paragraphs (2)(a) and (2)(b) of regulation 68 (annual rate of retirement pension (active members)), but without subtracting the early payment reduction.

(3) The annual rate of a higher tier ill-health pension is calculated by multiplying the annual amount of the adjusted lower tier ill-health pension by the member’s assumed period of pensionable service and by 2%.

(4) In this regulation—

“the adjusted lower tier ill-health pension” (“*y pensiwn addasedig afiechyd haen isaf*”) means the lower tier ill-health pension payable under paragraph (2) calculated—

- (a) excluding an amount equal to the amount of any added pension which had been included in the calculation of the lower tier ill-health pension, and
- (b) without the deduction for any commuted portion of the pension;

“the member’s assumed period of pensionable service” (“*cyfnod tybiedig gwasanaeth pensiynadwy yr aelod*”) means the period expressed in years—

- (a) beginning with the day after the member’s continuous period of pensionable service ceased, and
- (b) ending with the day before the day on which the member would reach normal pension age.

### **Early payment of retirement pension to deferred member**

**76.** A deferred member who has not reached deferred pension age is entitled to immediate payment of a retirement pension calculated under regulation 69 (annual rate of retirement pension (deferred members)) without subtracting the early payment reduction if the following conditions are satisfied—

- (a) the member has given written notice to the scheme manager requesting payment of the pension before deferred pension age;
- (b) in the opinion of the IQMP, the member is incapable of undertaking regular employment because of infirmity of mind or body and this incapacity will continue until deferred pension age; and
- (c) the scheme manager has determined that the member is entitled to the early payment of the retirement pension.

### **Review of ill-health award or early payment of retirement pension**

77.—(1) Where a member (P) has been in receipt of an ill-health award under regulation 74 (entitlement to lower tier ill-health pension and higher tier ill-health pension) for less than 10 years and is under deferred pension age, the scheme manager must consider, at such intervals as it considers appropriate, whether P has become capable—

- (a) of performing any duty appropriate to the role from which P retired on grounds of ill-health; and
- (b) of undertaking regular employment.

(2) The scheme manager must consider, at such intervals as it considers appropriate before the member reaches deferred pension age, in relation to a pensioner member who was a deferred member and whose pension is being paid early by virtue of regulation 76 (early payment of retirement pension to a deferred member), whether the member has become capable of undertaking regular employment.

### **Consequences of review**

78.—(1) If, on such consideration as is mentioned in regulation 77(1) (review of ill-health award or early payment of retirement pension), the scheme manager determines<sup>(54)</sup> that a member (H) who is in receipt of a higher tier ill-health pension has become capable of undertaking regular employment, H's entitlement to that pension must cease with immediate effect.

(2) Subject to paragraph (3), a lower tier ill-health pension must continue to be paid to a member who ceases to be entitled to a higher tier ill-health pension.

(3) If—

- (a) on such consideration as is mentioned in regulation 77(1) (review of ill-health award or early payment of retirement pension), the scheme manager determines that a member (L) who is in receipt of a lower tier ill-health pension has become capable of performing the duties appropriate to the role from which L retired on grounds of ill-health; and
- (b) the employer makes L an offer of employment in that role ("a paragraph (3)(b) offer"),

L's entitlement to a lower tier ill-health pension must cease whether L accepts or declines the offer.

(4) The employer must by written notice when making a paragraph (3)(b) offer specify a date by which, if the member has not accepted the offer, the member will be taken to have declined it.

(5) A lower tier ill-health pension ceases to be payable on the earlier of the following dates—

- (a) the date on which a member re-enters scheme employment pursuant to a paragraph (3) (b) offer;
- (b) such date after the paragraph (3)(b) offer is made as the employer specifies by notice under paragraph (4).

(6) Where a member declines a paragraph (3)(b) offer, a deferred member's account must be established under regulation 57 (account established after ill-health award ceases to be payable) from the date on which that member's ill-health award ceases to be payable in accordance with paragraph (5).

(7) If, on such consideration as is mentioned in regulation 77(2) (review of ill-health award or early payment of retirement pension), the scheme manager has obtained the IQMP's opinion which states that a deferred member (P) whose deferred pension is being paid early has become capable of undertaking regular employment, P's entitlement to early payment of the pension must cease with immediate effect and P's deferred member's account must be adjusted under regulation 56 (adjustment of account after early payment of deferred pension ceases).

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<sup>(54)</sup> Regulation 162 (role of IQMP in determinations by the scheme manager) requires the scheme manager to obtain the opinion of the IQMP in certain circumstances.

## CHAPTER 5

### Payment of retirement benefits

#### Commencement of pensions

**79.**—(1) The first period for which any retirement pension is payable immediately on a member leaving scheme employment begins with the day after the date on which the employment ends where the member has made a claim for payment of that pension before that date.

(2) Where an active member has not claimed payment of the retirement pension before the date on which that member retires, the pension will be payable from a date after the claim is made as notified to the member by the scheme manager.

(3) Where the employer of an active member has determined to pay that member a retirement pension before the member reaches normal pension age in exercise of the powers in regulation 71 (employer initiated retirement), the first period for which the pension is payable begins on the day after the member's scheme employment ends.

(4) In the case of an active member who exercises the partial retirement option, the first period for which any retirement pension is payable begins on the day after the date on which the partial retirement option is exercised.

(5) In the case of a deferred member, the first period for which payment of a retirement pension is to be payable begins on the date on which the member attains deferred pension age where a deferred member has claimed payment of a retirement pension unless that member gives written notice to the scheme manager before the member reaches deferred pension age requesting—

- (a) to defer payment by notice given to the scheme manager more than three months before the member reaches deferred pension age and any such deferral must not extend beyond the day before the member's 75th birthday;
- (b) payment of the retirement pension before deferred pension age after the deduction of the early payment reduction; or
- (c) early payment of the retirement pension under regulation 76 (early payment of retirement pension to deferred member) on grounds of incapacity to undertake regular employment.

(6) Where an active member is entitled to a lower tier ill-health pension or a higher tier ill-health pension under regulation 74 (entitlement to lower tier ill-health pension and higher tier ill-health pension), the first period for which a retirement pension is payable begins on the day after the date on which the member's scheme employment is terminated.

(7) Where a deferred member has made a request referred to in paragraph (5)(c) and is entitled to the early payment of a retirement pension, the first period for which the pension is payable begins on the date on which the deferred member became incapable of undertaking regular employment because of infirmity of body or mind or, if that date cannot be ascertained, from the date of the member's request to the scheme manager for early payment.

(8) Where a deferred member has made a request referred to in paragraph (5)(a) or (b), the pension will be payable from a date after the claim for it is made which is notified to the member by the scheme manager.

#### Option to commute part of pension

**80.**—(1) A member who becomes entitled to the immediate payment of a retirement pension may opt under this regulation to exchange part of the pension for a lump sum.

(2) The option may only be exercised—

- (a) by written notice to the scheme manager which sets out the amount to be commuted; and

- (b) before the first payment of the pension is made.
- (3) If a member exercises the option, for every £1 by which the amount of the member's annual rate of pension is reduced, the member must be paid a lump sum of £12.
- (4) A member may not exchange for a lump sum under this regulation more than the lesser of—
  - (a) 25% of the pension; and
  - (b) the proportion of the pension to the extent that it would result in a scheme chargeable payment<sup>(55)</sup> for the purposes of Part 4 of FA 2004.
- (5) This regulation does not apply to a pension derived from pension credit rights if the pension debit member from whose rights the pension is derived has received a lump sum under this regulation before the date on which the pension sharing order takes effect.
- (6) This regulation does not apply to a higher tier ill-health pension.

## CHAPTER 6

### Allocation of part of pension

#### Allocation election

- 81.**—(1) This regulation applies in relation to a retirement earned pension payable in respect of a member's pensionable service under this scheme.
- (2) An active member or deferred member may elect to allocate up to a third of the amount of the annual rate of any of the member's retirement pensions under this scheme to a beneficiary ("allocation election").
- (3) The beneficiary of an allocation election must be a person who, when the allocation election is made, is—
- (a) the spouse, civil partner or cohabiting partner of the active member or the deferred member; or
  - (b) with the consent of the scheme manager, any other person who is substantially dependent on the active member or deferred member and would have been a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to FA 2004 if the member had died when the election was made<sup>(56)</sup>.
- (4) The scheme manager may withhold consent under paragraph (3)(b) if the scheme manager is not satisfied that the person is substantially dependent on the active member or deferred member.
- (5) If a member wishes to allocate pension to more than one beneficiary, a separate election must be made in respect of each beneficiary.
- (6) Where more than one portion of a particular pension is allocated, the total of the allocated portions of that pension must not exceed the portion of that pension retained by the active or deferred member.
- (7) If paragraph (8) applies, the member may elect to allocate only so much of the pension (after subtracting the commutation amount, if any) that exceeds the guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the scheme manager having regard to actuarial guidance.
- (8) This paragraph applies if the member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of PSA 1993 in relation to the whole or part of a pension as a result of receipt

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<sup>(55)</sup> See section 241 of the Finance Act 2004. That section was amended by the Finance Act 2011 (c. 11), Schedule 16, paragraph 74 and the Finance Act 2006 (c. 25), Schedule 21, paragraph 9.

<sup>(56)</sup> Paragraph 15(2) was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraph 26 and S.I. 2005/3229.

by this scheme of a transfer payment from another pension scheme in respect of which the member had such a guaranteed minimum.

### **Making an allocation election**

**82.**—(1) When an active or deferred member intends to make an allocation election, that member must—

- (a) satisfy the scheme manager that that member is in good health and has a normal life expectancy; and
- (b) give the scheme manager written notice of an allocation election (a “notice of allocation”) specifying—
  - (i) the portion,
  - (ii) the name and address of the beneficiary,
  - (iii) the sex of the beneficiary, and
  - (iv) the date of birth of the beneficiary.

(2) The notice of allocation, which may be sent by post, must be given not earlier than two months before the pension comes into payment.

(3) Where the requirements in paragraphs (1) and (2) have been satisfied, the scheme manager must notify the member that it has accepted the allocation election.

(4) An election has no effect if the member or the beneficiary dies before the notice of allocation takes effect.

### **Effect of allocation**

**83.**—(1) If an allocation election takes effect, the member’s retirement pension is reduced accordingly.

(2) If a notice of allocation takes effect, it does so on the day on which the retirement pension comes into payment.

(3) Where a notice of allocation has taken effect, and the beneficiary survives the pensioner, the scheme manager must, from the date of the pensioner’s death, pay the beneficiary a pension for life (“allocated pension”) of an amount determined by the scheme manager in accordance with actuarial guidance in force when the notice of allocation takes effect, having regard to—

- (a) the amount of retirement pension allocated under the election; and
- (b) the age of the pensioner and beneficiary at the date when the notice of allocation was given.

(4) Where more than one portion of a member’s retirement pension has been allocated, a separate calculation must be made under paragraph (3) in respect of each allocation.

(5) Where—

- (a) a notice of allocation has taken effect; and
- (b) the beneficiary pre-deceases the pensioner,

the scheme manager must pay to the pensioner (distinguishing it from any other pension payable to that pensioner) the portion of pension that had been allocated (“the failed allocation pension”).

(6) Where paragraph (5) applies, the pensioner is not entitled to recover from the scheme manager the amount of any deduction made in respect of the failed allocation pension.

(7) An allocation ceases to have effect for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither—

- (a) the member’s spouse, civil partner or cohabiting partner on—

- (i) the date on which the member becomes entitled to the pension, or
- (ii) when the member dies; nor
- (b) a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to FA 2004 when the member dies.

### Adjustment of allocated benefit

**84.—**(1) The amount of allocated pension payable to the beneficiary of an allocation election may be adjusted in a manner determined by the scheme manager if—

- (a) the member who made the allocation election dies after reaching the age of 75; and
- (b) on the death of the member, the amount of allocated pension payable to the beneficiary does not qualify as a dependants' scheme pension under section 167 (the pension death benefit rules) of FA 2004<sup>(57)</sup>.

(2) In this regulation, “allocated pension” (*“pensiwn dyranedig”*) has the same meaning as that given in regulation 83(3) (effect of allocation).

## PART 6

### Death benefits

#### CHAPTER 1

##### Interpretation

### Meaning of “surviving partner”

**85.—**(1) For the purposes of these Regulations, a person is a surviving partner in relation to a member if, at the date of the member's death, that person is—

- (a) the spouse or civil partner of the member;
- (b) cohabiting with the member and—
  - (i) is not married or in a civil partnership with that member,
  - (ii) is not the spouse or civil partner of any other person,
  - (iii) could enter into a marriage or civil partnership with the member under the law of England and Wales but has not done so,
  - (iv) is financially dependent on the scheme member or is, with the scheme member, in a state of mutual financial dependency, and
  - (v) is in a long-term relationship with the scheme member.

(2) In paragraph (1), “long-term relationship” (*“perthynas hirdymor”*) means a relationship that has continued for a period of at least two years ending with the date on which the question of the person's status in relation to the member falls to be considered, or such shorter period as the scheme manager may in any particular case think fit.

(3) In these Regulations, “cohabiting partner” (*“partner sy'n cyd-fyw”*) means a person who satisfies the requirements in paragraph (1)(b).

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<sup>(57)</sup> Section 167 was amended by the Finance Act 2007 (c. 11), Schedule 20, paragraph 22; the Finance Act 2011 (c. 11), Schedule 16, paragraph 11 and the Finance Act 2014 (c. 26), section 41(2). See also Part 2 of Schedule 28 to the Finance Act 2011 for the meaning of expressions used in section 167.



### **Meaning of “initial period”**

**86.** For the purposes of this Part, the “initial period” (“*cyfnod dechreuol*”) is the period of 13 weeks commencing on the day after the death of the member during which a bereavement pension may be payable to any surviving partner or eligible child.

## **CHAPTER 2**

### **Pensions for surviving partners**

#### **Surviving partner’s pension payable on death of active member**

**87.**—(1) This regulation applies in relation to the surviving partner of a member who dies if, at the date of death, the member is an active member and has qualifying service of more than three months.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner’s pension.

(3) Subject to regulation 91 (reduction in pensions in cases of wide age disparity), the annual rate of the surviving partner’s pension is an amount equal to half the pension which the member would have been entitled to draw if the member had retired on the grounds of ill-health with the award of a higher tier ill-health pension on the date of the member’s death.

#### **Surviving partner’s pension payable on death of deferred member**

**88.**—(1) This regulation applies in relation to the surviving partner of a member who at the date of death is a deferred member.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner’s pension.

(3) Subject to regulation 91 (reduction in pensions in cases of wide age disparity), the annual rate of surviving partner’s pension is an amount equal to half of the sum of the provisional amount of deferred pension specified in the deferred member’s account and the amount of the added pension (if any) specified in the added pension account.

#### **Surviving partner’s pension payable on death of pensioner member**

**89.**—(1) This regulation applies in relation to the surviving partner of a member (P) who at the date of death is a pensioner member.

(2) A surviving partner to whom this regulation applies is entitled to a surviving partner’s pension.

(3) Subject to regulation 91 (reduction in pensions in cases of wide age disparity), the annual rate of the surviving partner’s pension is equal to half the amount of the annual rate of the retirement pension payable to P immediately before P’s death.

(4) Where an early payment reduction had been made on P’s retirement, the amount in paragraph (2) is half of the amount of retirement pension that would have been payable to P if that reduction had not been made.

#### **Bereavement pension: surviving partner**

**90.**—(1) Subject to paragraph (2), the surviving partner of an active member, or a pensioner member, is entitled to a bereavement pension for the initial period.

(2) The surviving partner of an active member is only entitled to a bereavement pension if the active member had at least three months qualifying service.

(3) If the member was an active member at the date of the member’s death, the weekly amount of the bereavement pension payable under paragraph (1) is equal to the difference between the weekly amount of pensionable pay which the member was paid at the date of the member’s death or,

where the member was treated as receiving assumed pensionable pay, the weekly amount of assumed pensionable pay, and the weekly amount of the surviving partner's pension.

(4) If the member was a pensioner member at the date of the member's death, the weekly amount of the bereavement pension payable under paragraph (1) is equal to the difference between the weekly amount of the pension to which the member was entitled at the date of the member's death and the weekly amount of the surviving partner's pension.

### **Reduction in pensions in cases of wide age disparity**

**91.**—(1) This regulation applies if, on the death of a member of this scheme, a surviving partner's pension is payable to a person who is more than 12 years younger than the member.

(2) The annual rate of that pension is reduced by the lower of—

(a) 50% of the amount of the annual rate of the pension so calculated; or

(b)  $2.5 \times (N - 12)\%$  of that amount,

where N is the number of whole years by which the surviving partner is younger than the member.

### **Survivor's guaranteed minimum pensions**

**92.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum under section 17(58) of PSA 1993 in relation to benefits in respect of the deceased member under this scheme—

(a) nothing in these Regulations permits or requires anything that would cause requirements made by or under that Act in relation to such a person and such a person's rights under a scheme not to be met in the case of the person;

(b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person.

(2) Paragraphs (3) and (4) are without prejudice to the generality of paragraph (1).

(3) This paragraph applies if apart from this regulation—

(a) no pension would be payable to the surviving partner under this Part; or

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

(4) If paragraph (3) applies—

(a) a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable; or

(b) if paragraph (3)(b) applies, the pensions payable are increased to the amount specified in sub-paragraph (a).

(5) Paragraph (4) does not apply to a pension—

(a) that is forfeited—

(i) as a result of a conviction for treason, or

(ii) in a case where the relevant offence under regulation 181 (forfeiture: offences committed by members, surviving partners or eligible children) falls under

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(58) Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c. 35), section 284(2); the Pensions Act 2007 (c. 22), section 14(2); the Marriage (Same Sex Couples) Act 2013 (c. 30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and 2014/560.

paragraph (b) of the definition in that regulation of “relevant offence” (Official Secrets Acts offences); or

- (b) where that pension is commuted under regulation 177 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(59)</sup> are met.

## CHAPTER 3

### Pensions for eligible children

#### Eligible child’s pension

**93.**—(1) If a member, who has at least three months qualifying service, dies leaving an eligible child, an eligible child’s pension and, depending on the deceased member’s circumstances, a bereavement pension is payable in respect of the child.

(2) An eligible child’s pension is not payable in respect of any period before a child’s birth.

(3) If the child ceases to be an eligible child after the date of the member’s death, the pension ceases to be payable unless and until the child becomes an eligible child again, but, if the child does not cease to be an eligible child, the pension is payable for life.

#### Meaning of “eligible child”

**94.**—(1) In these Regulations, , in relation to a deceased member, “child” (*“plentyn”*) means—

- (a) a natural child, step-child or adopted child of the member; or
- (b) the natural child, step-child or adopted child of the member’s spouse, civil partner or cohabiting partner; or
- (c) any natural child of the member who was born after the member’s death and with whom the child’s mother was pregnant at the date of the member’s death.

(2) A child of the deceased member is an “eligible child” (*“plentyn cymwys”*) if—

- (a) the child was at the date of the deceased member’s death financially dependent on the deceased member;
- (b) the child is not married or in a civil partnership; and
- (c) the child satisfies any of the conditions A to C.

(3) Condition A is that the person is under the age of 18.

(4) Condition B is that the person is in full-time education or on a course of at least one year’s duration and has not reached the age of 23.

(5) Condition C is that the person is dependent on the deceased member at the date of the deceased member’s death by reason of permanent incapacity of mind or body.

#### Eligible child’s pension on death of active member

**95.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is an active member and has qualifying service of more than three months.

(2) The annual rate of an eligible child’s pension to which this regulation applies is an amount equal to the specified proportion of the pension which the member would have been entitled to draw if the member had retired on the grounds of ill-health with the award of a higher tier ill-health pension on the date of the member’s death.

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<sup>(59)</sup> S.I. 1996/1172. Regulation 60 was substituted by S.I. 2006/744 and amended by S.I. 2006/1337, 2009/2930 and 2010/499.

### **Eligible child's pension payable on death of deferred member**

**96.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is a deferred member.

(2) The annual rate of an eligible child's pension is an amount equal to the specified proportion of the sum of the provisional amount of deferred pension specified in the deferred member's account and the amount of the added pension (if any) specified in the added pension account.

### **Eligible child's pension payable on death of pensioner member**

**97.**—(1) This regulation applies in relation to an eligible child of a member who dies if, at the date of death, the member is a pensioner member (P).

(2) Subject to paragraph (3), the annual rate of an eligible child's pension is an amount equal to the specified proportion of the amount of retirement pension payable to P immediately before P's death.

(3) Where an early payment reduction had been made on P's retirement, the amount in paragraph (2) is the specified proportion of the amount of retirement pension that would have been payable if that reduction had not been made.

### **Specified proportion**

**98.**—(1) The specified proportion is one quarter where there is one eligible child at the date of the member's death.

(2) If there is more than one eligible child at the date of the member's death the specified proportion is half of the pension mentioned in regulations 95 (eligible child's pension on death of active member), 96 (eligible child's pension payable on death of deferred member) and 97 (eligible child's pension payable on death of pensioner member) divided by the number of eligible children so that each eligible child receives an equal share.

(3) If a person ceases to be an eligible child, that person's pension must cease to be paid and where there is still more than one eligible child, the amount of that pension must be distributed equally between the remaining eligible children (if any).

### **Increase in eligible child's pension where there is no surviving partner**

**99.**—(1) This regulation applies if, at the date of the member's death, there was no person who was entitled to a surviving partner's pension.

(2) If this regulation applies and there is an eligible child, that child is also entitled to the amount of pension in accordance with paragraphs (3) or (4) which the surviving partner would have received—

- (a) under regulation 87 (surviving partner's pension payable on death of active member) if the member (P) was an active member at the date of P's death;
- (b) under regulation 88 (surviving partner's pension payable on death of deferred member) if P was a deferred member at the date of P's death;
- (c) under regulation 89 (surviving partner's pension payable on death of pensioner member) if P was a pensioner member at the date of P's death.

(3) If there is only one eligible child, that child receives an additional amount equal to the amount ascertained in accordance with paragraph (2).

(4) If there is more than one eligible child at the date of P's death, the amount ascertained in accordance with paragraph (2) is divided between the number of eligible children so that each eligible child receives an equal share.

(5) If a person ceases to be an eligible child, that person's share of the amount ascertained in accordance with paragraph (2) must cease to be paid and the share must be distributed equally between the remaining eligible children (if any).

#### **Increase in eligible child's pension where member was pension debit member**

**100.** If the member's benefits were at the date of death subject to a reduction under section 31 of WRPA 1999, any eligible child's pension must be calculated as though that reduction had not been made.

#### **Bereavement pension: eligible child**

**101.—(1)** If a surviving partner's pension is not payable on the death of the member, a bereavement pension is payable to an eligible child who is entitled to an eligible child's pension on the death of an active member or a pensioner member.

(2) If the surviving partner dies before the end of the initial period and a bereavement pension was payable to the surviving partner, a bereavement pension is payable to any eligible child for the remaining part of the initial period or, if earlier, until the child ceases to be eligible for an eligible child's pension.

(3) If the member was an active member at the date of the member's death, the weekly amount of the bereavement pension payable under paragraphs (1) or (2) is equal to the difference between the weekly amount of pensionable pay which the member was paid at the date of the member's death or, where the member was treated as receiving assumed pensionable pay, the weekly amount of assumed pensionable pay, and the weekly amount of the surviving partner's pension.

(4) If the member was a pensioner member, the weekly amount of the bereavement pension payable under paragraphs (1) or (2) is equal to the difference between the weekly amount of the pension to which the member was entitled at the date of the member's death and the weekly amount of the surviving partner's pension.

(5) If there is more than one eligible child, the weekly amount of the bereavement pension payable under paragraphs (1) or (2) is divided by the number of eligible children so that each receives an equal share.

(6) If a person ceases to be an eligible child before the end of the initial period, that person's share of the bereavement pension must cease to be paid and the share must be distributed equally between the remaining eligible children (if any).

### **CHAPTER 4**

#### **Lump sum death benefits**

#### **Meaning of "final pay"**

**102.—(1)** In this Chapter, "final pay" ("tâl terfynol") means the greater of the following—

- (a) the amount of the member's pensionable pay during the member's continuous period of pensionable service in the period of 365 days ending with the last day of pensionable service; and
- (b) the amount of the member's pensionable pay during the member's continuous period of pensionable service in the period of three years ending with the last day of pensionable service, divided by three.

(2) If the member's continuous period of pensionable service was less than 365 days, the amount in paragraph (1)(a) is an amount equal to the member's annualised final pay.

(3) For the purpose of determining which of the amounts mentioned in paragraph (1) is the greater—

(a) if the member's continuous period of pensionable service was less than three years, the amount in paragraph (1)(b) is the total pensionable pay received for that service divided by the number of years in pensionable service calculated in accordance with regulation 192 (calculation of periods of membership and service); and

(b) if a member is treated as receiving assumed pensionable pay for any period included in paragraph (1)(a) or (1)(b), pensionable pay in this regulation includes that assumed pensionable pay.

(4) But if the continuous period of pensionable service includes the day 29 February, paragraphs (1)(a) and (2) have effect with the substitution for "365" of "366".

### **Meaning of "annualised final pay"**

**103.**—(1) For the purpose of this Chapter, a member's annualised final pay is  $FP \times 365/N$  where—

(a) FP is the member's pensionable pay during the member's continuous period of pensionable service; and

(b) N is the number of days in that period.

(2) But if the continuous period of pensionable service includes the day 29 February, paragraph (1) has effect with the substitution for "365" of "366".

### **Person to whom lump sum death benefit payable**

**104.** The scheme manager may, at its absolute discretion, pay any lump sum death benefit payable under this Chapter to or for the benefit of the member's nominee, personal representatives or any person appearing to the scheme manager to have been a relative or dependant of the member.

### **Lump sum payable on death of active member**

**105.**—(1) If an active member dies, the scheme manager must pay a lump sum death benefit.

(2) The amount of the lump sum death benefit is an amount equal to three times the amount of the member's final pay.

(3) Where an active member has more than one active member's account, a lump sum death benefit is payable in respect of each of those accounts.

### **Lump sum payable on death of pensioner member**

**106.**—(1) This regulation applies if a pensioner member dies within five years of the pension coming into payment.

(2) If this regulation applies, the scheme manager must pay a lump sum death benefit.

(3) The amount of the lump sum death benefit is equal to—

(a) the total annual amount of the member's pensions, multiplied by five; less

(b) the total amount of any pension payments made to the member under this scheme.

(4) In paragraph (3)(a), "total annual amount of the member's pensions" (*"cyfanswm blynyddol pensiynau'r aelod"*) means the total of the annual rate of the retirement pension shown in the member's pension accounts calculated as if the beginning date for that pension were the date of the member's death.

(5) For the purpose of this regulation any amounts paid or payable to or in respect of the member in the capacity of a pension credit member are disregarded.

### **Lump sum payable on death in certain cases**

**107.** Where a person (P) at the time of P's death was a pensioner member of this scheme and an active member of this scheme, the amount of the lump sum death benefit payable is the greater of the amount of lump sum death benefit payable under regulation 105 (lump sum payable on the death of active member) and the amount of the lump sum death benefit payable under regulation 106 (lump sum payable on the death of a pensioner member).

### **Lump sum payable on death of pension credit member**

**108.—**(1) If a pension credit member dies before any benefits derived from a pension credit have become payable to the member, the scheme manager must pay a lump sum death benefit in accordance with paragraph (2).

(2) The amount of the lump sum death benefit is equal to the product of 2.25 and the annual rate of the pension credit member's pension to which that member would have been entitled if that member had been entitled to the immediate payment of the pension at the date of death.

(3) If a pension credit member dies within five years of the pension credit member's pension becoming payable and before attaining the age of 75, the scheme manager must pay a lump sum death benefit in accordance with paragraph (4).

(4) The amount of the lump sum death benefit is the difference between—

- (a) the amount that is five times the amount of the pension credit member's pension; and
- (b) the instalments of pension that have been paid.

(5) In paragraph (4), "amount of the pension credit member's pension" ("*swm pensiwn yr aelod â chredyd pensiwn*") means the annual amount of that pension at the date the pension credit member's pension came into payment.

(6) If the deceased member was a pension credit member entitled to two or more pension credits, the lump sum death benefits under this scheme are payable in respect of the member as if the member were two or more members, each being entitled to one of the pension credits.

## **CHAPTER 5**

### **Payment of death benefits**

#### **Payment of pensions under this Part**

**109.—**(1) A surviving partner's pension or eligible child's pension is payable from the day after the date of the member's death.

(2) An eligible child's pension payable in respect of an eligible child aged under 18 must be paid to such other person as the scheme manager determines and the scheme manager must require the person to apply it for the eligible child's benefit in accordance with the scheme manager's directions.

#### **Surviving partner's pensions and eligible child's pensions: suspension and recovery**

**110.—**(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 made a false declaration or deliberately suppressed a material fact in connection with the award.

(2) If this regulation applies, the scheme manager may—

- (a) cease paying the pension; and

(b) recover any payment made under the award.

(3) Paragraph (2) does not affect the scheme manager's right to recover a payment or overpayment under any other provision where the scheme manager considers it appropriate to do so.

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

**111.**—(1) This regulation applies where after the death of an active member, deferred member or pensioner member—

(a) a pension is paid in respect of one or more persons under this Part 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

(b) subsequently it appears—

(i) that a person in respect of whom such a pension has been paid was not an eligible child on the date of death,

(ii) that a further person was an eligible child, or

(iii) that a child who was born after the member's death is an eligible child.

(2) The scheme manager may make such adjustments in the amount of the pensions payable in respect of the children in question as are required in view of the facts as they subsequently appear and these adjustments may apply retrospectively.

(3) Paragraph (2) does not affect the scheme manager's right to recover a payment or overpayment in any case where the scheme manager considers it appropriate to do so.

### **Adjustment of eligible child's awards consequent on re-instatement of pension benefits**

**112.**—(1) This regulation applies where a person (P) who would be eligible to receive benefits as a surviving partner or eligible child following the death of an active member, deferred member or pensioner member, has been convicted of the murder or manslaughter of that member and that conviction has subsequently been quashed on appeal.

(2) If P is then eligible to receive a surviving partner's pension, any increase in an eligible child's pension under regulation 99 (increase in eligible child's pension where there is no surviving partner) ceases to be payable from the date on which the conviction is quashed.

(3) If P is then eligible to receive an eligible child's pension, and if more than one person is receiving an eligible child's pension on the day before the conviction is quashed, the amount of each eligible child's pension is reduced from the date on which the conviction is quashed to an amount of the eligible child's pension determined according to the specified proportion which would have applied to that number of eligible children.

### **Adjustment of benefits to comply with FA 2004 where members die over 75**

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

(a) a member dies after reaching the age of 75; and

(b) apart from this regulation, any part of a pension to which any person becomes entitled under this Part on the death would not qualify as a dependants' scheme pension for the purposes of section 167 of FA 2004 (the pension death benefit rules).

(2) The benefit payable to the person may be adjusted in such manner as is determined by the scheme manager so that it qualifies as a dependants' scheme pension for the purposes of section 167 of FA 2004.



## PART 7

### Benefits for pension credit members

#### Entitlement to pension credit members' pension

**114.**—(1) A pension credit member (P) of this scheme is entitled to the immediate payment of a pension credit member's pension under this scheme if—

- (a) P has reached deferred pension age;
- (b) the pension sharing order under which P is entitled to the pension credit has taken effect; and
- (c) P has claimed payment of the pension.

(2) If P is entitled to two or more pension credits, P is entitled to a pension credit member's pension in respect of each pension credit.

#### Annual rate of pension credit member's pension

**115.** The annual rate of a pension credit member's pension is calculated by—

- (a) taking the amount of credited pension specified in the pension credit member's account; and
- (b) subtracting the commutation amount (if any) specified in that account in relation to that amount.

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

**116.** The benefits to which a pension debit member is entitled under these Regulations are subject to the reduction of the relevant amount calculated in accordance with regulation 63 (establishment of pension credit member's account).

#### Pension credit member's rights

**117.** Benefits that are attributable (directly or indirectly) to a pension credit may not be aggregated with any other benefit to which the pension credit member is entitled under this scheme.

#### Commutation of part of pension

**118.**—(1) A pension credit member who becomes entitled to payment of a pension credit member's pension under this scheme may opt to exchange part of the pension for a lump sum.

(2) The option may only be exercised by notice—

- (a) to the scheme manager not earlier than four months before the later of—
  - (i) the date on which the pension sharing order comes into effect, and
  - (ii) the date on which the person attains deferred pension age;
- (b) in such form as the scheme manager requires; and
- (c) given before the first payment of the pension is made.

(3) If a pension credit member exercises the option under this regulation, for every £1 by which the amount of the member's annual rate of pension is reduced, the member is to be paid a lump sum of £12.

(4) The commuted portion must not exceed one quarter of the amount of the pension credit member's pension.

(5) A pension credit member may not exchange pension for a lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 (pension scheme etc.) of FA 2004 (see section 241 of that Act).

(6) This regulation does not apply if the pension debit member from whose rights the pension is derived received a lump sum under Part 5 (retirement benefits) before the date on which the pension sharing order takes effect.

## PART 8

### Contributions

#### CHAPTER 1

##### Member contributions

##### Member contributions

**119.**—(1) Subject to regulations 120 to 122 (contributions during absences), an active member of this scheme must pay contributions to the scheme in respect of a scheme employment at the contribution rate applicable to the annual pensionable pay which that member is receiving in the pay period in which 1 April falls for that employment (or, in the case of an active member whose membership commences after 1 April in any year, to the annual pensionable pay the member receives at the commencement of that membership).

(2) The contribution rate applicable to a scheme employment is as specified in the following table, with the contribution rate specified in the appropriate column for the year to be considered applicable to the range of pensionable pay specified in the first column into which the active member's annual pensionable pay, rounded down to the nearest whole pound, falls:

<i>Pensionable pay range for an employment</i>	<i>Contribution rate 1 April 2015-31 March 2016</i>
Up to £27,000	10.0%
£27,001 to £50,000	12.2%
£50,001 to £142,500	13.5%
£142,501 or more	14.5%
<i>Pensionable pay range for an employment</i>	<i>Contribution rate 1 April 2016 – 31 March 2017</i>
Up to £27,270	10.0%
£27,271 to £50,500	12.5%
£50,501 to £142,500	13.5%
£142,501 or more	14.5%
<i>Pensionable pay range for an employment</i>	<i>Contribution rate 1 April 2017 – 31 March 2018</i>
Up to £27,543	10.5%
£27,544 to £51,005	12.7%

<i>Pensionable pay range for an employment</i>	<i>Contribution rate 1 April 2017 – 31 March 2018</i>
£51,006 to £142,500	13.5%
£142,501 or more	14.5%

  

<i>Pensionable pay range for an employment</i>	<i>Contribution rate from 1 April 2018</i>
Up to £27,818	11.0%
£27,819 to £51,515	12.9%
£51,516 to £142,500	13.5%
£142,501 or more	14.5%

(3) The amount of pensionable pay of a retained or volunteer firefighter for the purpose of the first column of the table must be that firefighter's reference pay.

(4) The amount of pensionable pay of a part-time regular firefighter for the purpose of the first column of the table must be the amount of pensionable pay of a whole-time regular firefighter of equivalent role and length of service.

(5) Where there is a change in scheme employment, or a material change which affects the member's pensionable pay in the course of a financial year and the revised amount of the pensionable pay falls into a different contribution rate range, the scheme manager must determine that this rate must be applied and the scheme manager must inform the member of the contribution rate applicable and the date from which it is to be applied.

(6) Where the scheme manager has determined under paragraph (5) that a different contribution rate applies, the member must pay contributions at that rate on the pensionable pay which that member is receiving at that time.

(7) For the purposes of identifying which is the applicable contribution rate under this regulation, any reduction in pensionable pay which arises as a consequence of any of the following circumstances is to be disregarded—

- (a) the actual or assumed enjoyment by the member of any statutory entitlement during any period away from work;
- (b) child-related leave;
- (c) leave of absence with permission;
- (d) sick leave;
- (e) leave due to injury;
- (f) reserve forces service leave;
- (g) absence due to a trade dispute; or
- (h) circumstances specified by the scheme manager in a particular case.

(8) In these Regulations, “member contributions” (“*cyfraniadau aelod*”) means contributions which an active member pays under this regulation, and regulations 120 to 122 (contributions during absences from work).

#### **Contributions during absence from work due to illness, injury, trade dispute or authorised absence**

**120.**—(1) An active member who is absent from scheme employment by reason of illness or injury must pay contributions at the contribution rate ascertained in accordance with regulation 119

(member contributions) multiplied by the amount of any pensionable pay received, including statutory pay.

(2) If an active member is absent from scheme employment by reason of illness or injury and is not entitled to receive pensionable pay (including statutory pay) for any period, that member may pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the amount of pensionable pay received immediately before the cessation of pay and if required by the scheme employer, must pay the amount of employer contribution which the scheme employer would otherwise be required to pay by regulation 126(3) (employer contributions).

(3) If an active member is absent on a trade dispute, the member may elect to pay the contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the assumed pensionable pay that member is treated as receiving and, if required by the scheme employer, must pay the amount of employer contribution which the scheme employer would otherwise be required to pay by regulation 126(3) (employer contributions).

(4) If an active member is away from work during a period of authorised unpaid absence, the member may elect to pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the assumed pensionable pay that member is treated as receiving and, if required by the scheme employer, must pay the amount of employer contributions which the scheme employer would otherwise be required to pay by regulation 126(3) (employer contributions).

(5) Where paragraph (2), (3) or (4) applies, the contributions must be paid before the end of the period of six months starting with the date on which the member is treated as receiving assumed pensionable pay.

### **Contributions during absence from work on reserve forces service leave**

**121.**—(1) An active member who is on reserve forces service leave and who is treated as receiving assumed pensionable pay must pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions).

(2) The amount of the contributions to be paid is calculated by multiplying the contribution rate by the lesser of the following amounts—

- (a) assumed pensionable pay;
- (b) the total of the actual pay received and any additional payment made by the scheme employer.

### **Contributions during child-related leave**

**122.**—(1) An active member on child-related leave must pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by any pensionable pay received, including statutory pay, but that pay does not include any amount that reduces the member's actual pensionable pay on account of possible entitlement to statutory pay.

(2) If an active member is on ordinary maternity leave, paternity leave or ordinary adoption leave and is not entitled to receive pensionable pay (including statutory pay) for any of that period, that member is treated for the purposes of these Regulations as if that member had paid contributions for that unpaid period under paragraph (1).

(3) An active member on additional maternity leave, additional paternity leave, additional adoption leave or parental leave who is not entitled to receive any pensionable pay (including statutory pay) for any of the period of child-related leave may elect to pay contributions at the contribution rate ascertained in accordance with regulation 119 (member contributions) multiplied by the assumed pensionable pay which that member is treated as receiving.

(4) An election to pay contributions may only be made before the end of the period of 30 days starting with the date on which that member returns to work after the period of child-related leave, or if the member does not return to work, the day on which the member ceases to be employed by the employer.

### **Deduction and payment of contributions**

**123.**—(1) The contributions required to be paid under regulation 119 (member contributions) may be deducted by the scheme employer from each instalment of pensionable pay as it becomes due unless another method of payment has been agreed between the scheme manager and the member.

(2) Contributions required to be paid under regulation 121(1) (contributions during absence from work on reserve forces service leave) may be deducted from any payment made under Part 5 of the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951(**60**) to the extent that they are payable in respect of the same period.

(3) Contributions which the member has elected to pay, or is required to pay, under regulations 120 (contributions during absence from work due to illness, injury, trade dispute or authorised absence) and 122 (contributions during child-related leave) may be paid by a lump sum or by deduction from instalments of pensionable pay as agreed between the scheme manager and the member.

### **Schedule 1 (payments for added pension)**

**124.** Schedule 1 has effect (including as to deduction of payments for added pension).

## **CHAPTER 2**

### **Refund of member contributions**

#### **Refund of all member contributions and payments for added pension made by member**

**125.**—(1) This regulation applies in relation to a continuous period of pensionable service under the scheme.

(2) All member contributions and payments resulting from the election to make additional pension contributions under Schedule 1 are refundable if—

- (a) regulation 24 (opting out before the end of the first three months) applies; or
- (b) the member ceases to be in pensionable service under this scheme and—
  - (i) the member has less than three months qualifying service,
  - (ii) if a transfer payment has been received by this scheme in relation to the member, it was from another occupational pension scheme, and
  - (iii) the member has not reached GMP age under this scheme.

(3) If paragraph (2)(b) applies, the member is entitled to be paid an amount equal to the sum of any member contributions and payments for added pension made by the member, less an amount equal to the income tax payable under section 205 of FA 2004 (short service refund lump sum charge) as a result of a refund of those contributions and payments(**61**).

(4) If all member contributions and payments for added pension made by the member are refunded under this regulation, the member's rights under this scheme in relation to the period of pensionable service are extinguished.

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(60) 1951 c. 65.

(61) Section 205 was amended by the Finance Act 2013 (c. 29) Schedule 46, paragraph 121 and S.I. 2010/536.

## CHAPTER 3

### Employer contributions

#### **Employer contributions**

**126.**—(1) The Welsh Ministers must, after consultation with the scheme actuary, determine the employer contribution rate.

(2) The employer of an active member of this scheme must pay contributions to the scheme at the employer contribution rate on that member's pensionable earnings.

(3) The employer of an active member who is treated under regulation 27 (meaning of "assumed pensionable pay") as receiving assumed pensionable pay must pay contributions at the employer contribution rate on the assumed pensionable pay that the member is treated as receiving.

(4) The Welsh Ministers must notify the scheme manager of the employer contribution rate and the date from which it will take effect.

(5) In these Regulations, "employer contribution" (*"cyfraniad cyflogwr"*) means the contributions payable under paragraph (2) or (3) of this regulation.

#### **Employer additional contribution: ill-health award**

**127.**—(1) Where a member (H) has retired with an entitlement to the immediate payment of a higher tier ill-health pension and a lower tier ill-health pension under regulation 74(2) (entitlement to lower tier ill-health pension and higher tier ill-health pension), H's employer must pay a higher tier ill-health additional contribution.

(2) The amount of the higher tier ill-health additional contribution is the amount determined and notified to H's employer by the Welsh Ministers.

(3) Where a member (L) has retired with an entitlement to the immediate payment of a lower tier ill-health pension and without any entitlement to a higher tier ill-health pension, L's employer must pay a lower tier ill-health additional contribution.

(4) The amount of the lower tier ill-health additional contribution is the amount determined and notified to L's employer by the Welsh Ministers.

(5) The employer must pay the higher tier ill health additional contribution or the lower tier ill health additional contribution, as the case may be, in equal instalments due on:

- (a) the date on which the member retires;
- (b) 1 April of the financial year following the financial year in which the first instalment was paid; and
- (c) 1 April of the financial year following the financial year in which the second instalment was paid.

#### **Refund of employer additional contribution for ill health award following review**

**128.**—(1) Subject to paragraph (2), where the scheme manager has considered the entitlement of a member (P) to an ill-health award under regulation 77 (review of ill-health award or early payment of retirement pension) and as a consequence of that review the entitlement of P to either a higher tier ill-health pension or a lower tier ill-health pension has ceased, or the entitlement of P to both pensions has ceased, the scheme manager must pay the amount specified in paragraph (3) or (5), as the case may be, to the employer.

(2) Where the employer has paid all the instalments of higher tier ill-health additional contributions required by regulation 127 (employer additional contribution: ill-health award), the scheme manager is not required to pay the employer the amount mentioned in paragraph (3).

(3) Where P, as a result of a review under regulation 77 (review of ill-health award or early payment of retirement pension), ceases to be entitled to a higher tier ill-health pension and remains entitled to a lower tier ill-health pension, the scheme manager must pay to the employer an amount equal to the difference between the instalments of higher tier ill-health additional contribution which have been paid under regulation 127(1) (employer additional contribution: ill-health award) and the instalments of the lower tier ill-health additional contribution which would have been required to be paid under regulation 127(3) (employer additional contribution: ill-health award) if only the lower tier ill-health pension had been payable (“the notional payment”).

(4) The scheme manager must determine the amount of the notional payment payable under paragraph (3).

(5) Where P, as a result of a review under regulation 77 (review of ill-health award or early payment of retirement pension), ceases to be entitled to a higher tier ill health pension and to a lower tier ill-health pension or to a lower tier ill-health pension, as the case may be, and the employer has not paid all the instalments of higher tier ill-health additional contribution or lower tier ill-health additional contribution as required by regulation 127 (employer additional contribution: ill-health award), the scheme manager must repay to the employer any instalments of higher tier ill-health additional contribution or lower tier ill-health additional contribution, as the case may be, which have been paid in respect of P and no further instalments will be due in respect of P.

### **Employer additional contribution: employer initiated retirement**

**129.**—(1) Where an employer has made a determination under regulation 71 (employer initiated retirement) to pay an active member who has not attained normal pension age a pension calculated in accordance with regulation 68 (annual rate of retirement pension (active members)) without making the early payment reduction, the employer must pay to the scheme the employer initiated retirement additional contribution.

(2) The amount of the employer initiated retirement additional contribution is calculated in accordance with actuarial guidance and that actuarial guidance must have regard to the difference between the pension that is payable under regulation 71 (employer initiated retirement) and the pension payable under regulation 68 (annual rate of retirement pension (active members)) reduced in accordance with regulation 70(3) (early payment reduction).

## **PART 9**

### **Firefighters’ Pension Fund**

#### **Interpretation of Part**

**130.** In this Part—

“the audited information” (“*yr wybodaeth archwiliedig*”) means—

- (a) the audited accounts referred to in regulation 134(1)(d),
- (b) any report by the auditor in relation to those accounts, and
- (c) if the scheme manager revises the information referred to in regulation 134(1)(e) and (f), that revised information;

“FPF” (“*CBDT*”) has the meaning given in regulation 131 (establishment of Firefighters’ Pension Fund);

“estimate” (“*amcangyfrif*”) means the information referred to in regulation 134(1)(a) and (b) (information to be provided to the Welsh Ministers);

“relevant financial year” (*“blwyddyn ariannol berthnasol”*) means a financial year ending on or after 31 March 2016 in respect of which the scheme manager is required by regulation 134(1) to provide information to the Welsh Ministers; and

“revised estimate” (*“amcangyfrif diwygiedig”*) means the revised information referred to in regulation 134(4);

“the un-audited information” (*“yr wybodaeth nas archwiliwyd”*) means the information referred to in regulation 134(1)(c), (e) and (f).

### **Establishment of Firefighters’ Pension Fund**

**131.** The Firefighters’ Pension Fund established and maintained by the scheme manager for the purposes of the 1992 Scheme, and used by the scheme manager for payments and receipts required or authorised to be made under the NFPS, must also be used for the purpose of payments and receipts required or authorised to be made under these Regulations.

### **Payments into the Firefighters’ Pension Fund**

**132.** The scheme manager must pay into the FPF—

- (a) any employer contribution paid by the employer which is required by regulation 126 (employer contributions);
- (b) any employer additional contribution paid by the employer in respect of a higher tier ill health pension which is required by regulation 127(1) (employer additional contribution: ill-health award);
- (c) any employer additional contribution paid by the employer in respect of a lower tier ill health pension which is required by regulation 127(3) (employer additional contribution: ill-health award);
- (d) any employer additional contribution paid by the employer in respect of an employer initiated retirement which is required by regulation 129(1) (employer additional contribution: employer initiated retirement);
- (e) any member contributions paid under regulation 119 (member contributions), regulation 120 (contributions during absence from work due to illness, injury, trade dispute or authorised absence), regulation 121 (contributions during absence from work on reserve forces service leave) or regulation 122 (contributions during child-related leave);
- (f) any member contributions for added pension paid under Schedule 1 (payments for added pension);
- (g) any club transfer value payment received; and
- (h) any transfer value payment received.

### **Payments to be made from the Firefighters’ Pension Fund**

**133.** The scheme manager must make payments out of the FPF in respect of the following—

- (a) any repayment of a member’s contributions and payments required by regulation 125 (refund of all member contributions and payments for additional pension made by member);
- (b) any refund of the amount of the employer additional contribution for an ill-health award under regulation 128 (refund of employer additional contribution for ill-health award following review);
- (c) any pension or award payable under this scheme;



- (d) any club transfer value payment to be paid in respect of a member's accrued benefits in this scheme; and
- (e) any transfer value payment required to be paid in respect of a member's accrued benefits in this scheme.

### **Information to be provided to the Welsh Ministers**

**134.**—(1) The scheme manager must for each financial year ending on or after 31 March 2016 (“relevant financial year”) send the following information in writing to the Welsh Ministers—

- (a) the total amount that the scheme manager estimates will be payable out of the FPF in that financial year;
- (b) the total amount that the scheme manager estimates will be credited to the FPF in that financial year;
- (c) the un-audited accounts relating to the FPF for that financial year;
- (d) the audited accounts relating to the FPF for that financial year;
- (e) the total amount paid out of the FPF in that financial year; and
- (f) the total amount paid into the FPF in that financial year.

(2) The information in paragraph (1) must be sent in the form specified in writing by the Welsh Ministers.

(3) Subject to paragraph (7), the scheme manager must send the estimate for each relevant financial year to the Welsh Ministers by such date before the start of the relevant financial year as the Welsh Ministers, may, in writing, specify.

(4) If the scheme manager revises any of the information sent in the estimate, the scheme manager must send the revised information (“the revised estimate”) to the Welsh Ministers by such date during the relevant financial year as the Welsh Ministers may, in writing, specify.

(5) The scheme manager must send the un-audited information to the Welsh Ministers by such date after the end of the relevant financial year as the Welsh Ministers may, in writing, specify.

(6) The scheme manager must send the audited information to the Welsh Ministers by such date after the end of the financial year as the Welsh Ministers may, in writing, specify.

(7) In relation to the relevant financial year ending on 31 March 2016 the scheme manager must send the estimate to the Welsh Ministers as soon as reasonably practicable after the start of that financial year.

### **Estimated deficits**

**135.**—(1) Where, having taken into account the estimate and any other relevant information, it appears to the Welsh Ministers that the total amount likely to be payable out of the FPF in the relevant financial year will exceed the total amount likely to be payable into that FPF in that year, the Welsh Ministers must pay an amount to the scheme manager equal to 80% of the likely deficit.

(2) Where, having taken into account any revised estimate and any other relevant information, it appears to the Welsh Ministers that—

- (a) the total amount likely to be payable out of the FPF in the relevant financial year will exceed the total amount likely to be paid into the FPF in that year; and
- (b) 80% of the likely deficit is more than—
  - (i) the amount paid or payable by the Welsh Ministers to the scheme manager under paragraph (1) in relation to the relevant financial year, or
  - (ii) where no such amount was paid or payable by the Welsh Ministers, zero,

the Welsh Ministers may pay to the scheme manager such amount as the Welsh Ministers think fit.

(3) Where the Welsh Ministers have paid an amount to a scheme manager under paragraphs (1) and (2), the total of these amounts must not exceed 80% of the likely deficit of the FPF for that year.

(4) Where the Welsh Ministers pay an amount to a scheme manager under paragraph (2), any amount paid or payable by the scheme manager to the Welsh Ministers in relation to the relevant financial year under regulation 136(1) (estimated surpluses) must not be paid or, if paid, the Welsh Ministers must repay it.

(5) The Welsh Ministers must make the payment to the scheme manager under paragraph (1) before the end of July of the relevant financial year or as soon as reasonably practicable thereafter.

(6) Where the Welsh Ministers make a payment under paragraph (2) or a repayment under paragraph (4), the payment or repayment must be made before the end of the relevant financial year or as soon as reasonably practicable thereafter.

### **Estimated surpluses**

**136.**—(1) Where, having taken into account the estimate and any other relevant information, it appears to the Welsh Ministers that the total amount likely to be paid into the FPF in the relevant financial year will exceed the total amount likely to be payable out of the FPF in that year, the Welsh Ministers must require the scheme manager to pay to the Welsh Ministers an amount equal to 80% of the likely surplus.

(2) Where, having taken into account any revised estimate and any other relevant information, it appears to the Welsh Ministers that—

- (a) the total amount likely to be paid into the FPF in the relevant financial year will exceed the total amount likely to be payable out of the FPF in that year; and
- (b) 80% of the likely surplus is more than—
  - (i) the amount paid or payable by the scheme manager to the Welsh Ministers under paragraph (1) in relation to the relevant financial year, or
  - (ii) where no such amount was paid or payable by the scheme manager, zero,

the Welsh Ministers may require the scheme manager to pay to the Welsh Ministers such amount as the Welsh Ministers may by notice in writing specify.

(3) Where the scheme manager has paid an amount to the Welsh Ministers under paragraphs (1) and (2), the total of these amounts must not exceed 80% of the likely surplus of the FPF for that year.

(4) Where the Welsh Ministers require the scheme manager to pay an amount under paragraph (2), any amount paid or payable by the Welsh Ministers to the scheme manager in relation to the relevant financial year under regulation 135(1) (estimated deficits) must not be paid or, if paid, the scheme manager must repay it.

(5) The Welsh Ministers must give to the scheme manager, on or before 3 March of the relevant financial year, written notice of the amount of any payment or repayment that the Welsh Ministers require the scheme manager to make under paragraph (1), (2) or (4).

(6) Where the scheme manager is required to make a payment under paragraphs (1) or (2) or to make a repayment under paragraph (4), the payment or repayment must be made before the end of the relevant financial year or as soon as reasonably practicable thereafter.

### **Actual deficits**

**137.**—(1) Where, having taken into account the un-audited information and any other relevant information, it appears to the Welsh Ministers that the total amount likely to be payable out of the

FPF in the relevant financial year exceeds the total amount likely to be paid or payable into the FPF in that year—

- (a) where the likely deficit (“the un-audited deficit”) exceeds the total of any amount paid or payable to the scheme manager in relation to that year under regulation 135(1) or (2) (estimated deficits) (“the regulation 135 total”), the Welsh Ministers must pay to the scheme manager the amount of the un-audited deficit less the regulation 135 total;
- (b) where the un-audited deficit is less than the regulation 135 total, the amount of the regulation 135 total less the un-audited deficit is not payable under regulation 135 (1) or (2) and, if already paid, the scheme manager must repay that amount to the Welsh Ministers;
- (c) where no amount was paid or payable by the Welsh Ministers to the scheme manager in relation to the relevant financial year under regulation 135(1) or (2), the Welsh Ministers must pay to the scheme manager the amount of the un-audited deficit; and
- (d) any amount paid or payable to the Welsh Ministers in relation to that year under regulation 136(1) or (2) is not payable and, if already paid, the Welsh Ministers must repay it to the scheme manager.

(2) Where, having taken into account the audited information and any other relevant information, it appears to the Welsh Ministers that the total amount paid or payable out of the FPF in the relevant year exceeds the total amount paid or payable into the FPF in that year—

- (a) where the difference between those total amounts (“the audited deficit”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to the scheme manager in relation to that year under paragraph (1)(a) or (c) or regulation 135(1) or (2) (“the un-audited total”), the Welsh Ministers must pay to the scheme manager the amount of the audited deficit less the un-audited total;
- (b) where the audited deficit is less than the un-audited total, the amount of the un-audited total less the audited deficit is not payable under paragraphs (1)(a) or (c) or regulation 135(1) or (2) and, if already paid, the scheme manager must repay it the Welsh Ministers;
- (c) where no amount was paid or payable by the Welsh Ministers to the scheme manager in relation to the relevant financial year under paragraphs (1)(a) or (c) or regulation 135(1) or (2), the Welsh Ministers must pay to the scheme manager the amount of the audited deficit; and
- (d) any amount paid or payable to the Welsh Ministers in relation to the relevant financial year under regulation 136(1) or (2) or regulation 138(1)(a) or (c) is not payable and, if already paid, the Welsh Ministers must repay it to the scheme manager.

(3) Where the Welsh Ministers, or the scheme manager, as the case maybe, are required to make a payment or repayment under paragraph (1), it must be made before the end of July in the financial year following the relevant financial year (“the second year”) or as soon as reasonably practicable thereafter.

(4) Where the Welsh Ministers or the scheme manager, as the case maybe, are required to make a payment or repayment under paragraph (2), it must be made before the end of July in the financial year following the second year or as soon as reasonably practicable thereafter.

### **Actual surpluses**

**138.**—(1) Where, having taken into account the un-audited information and any other relevant information, it appears to the Welsh Ministers that the total amount paid into the FPF in the relevant financial year exceeds the total amount paid out of that FPF in that year—

- (a) where the difference between those total amounts (“the un-audited surplus”) exceeds the total of any amounts paid or payable to the Welsh Ministers by the scheme manager in relation to that year under regulation 136(1) or (2) (“the regulation 136 total”), the Welsh

Ministers must require the scheme manager to pay to the Welsh Ministers the amount of the un-audited surplus less the regulation 136 total;

- (b) where the un-audited surplus is less than the regulation 136 total, the amount of the regulation 136 total less the un-audited surplus is not payable under regulation 136(1) or (2) and, if already paid, the Welsh Ministers must repay it to the scheme manager;
- (c) where no amount was paid or payable to the Welsh Ministers by the scheme manager in relation to the relevant financial year under regulation 136(1) or (2), the Welsh Ministers must require the scheme manager to pay to Welsh Ministers the amount of the un-audited surplus; and
- (d) any amount paid or payable by the Welsh Ministers to the scheme manager in relation to that year under regulation 135(1) or (2) is not payable and, if already paid, the scheme manager must repay it to the Welsh Ministers.

(2) Where, having taken into account the audited information and any other relevant information, it appears to the Welsh Ministers that the total amount paid into the FPF in the relevant financial year exceeds the total amount payable out of that FPF in that year—

- (a) where the difference between those total amounts (“the audited surplus”) exceeds the total of any amounts paid (but not repaid or repayable) or payable to the Welsh Ministers by the scheme manager in relation to that year under paragraph (1)(a) or (c) or regulation 136(1) or (2) (“the un-audited regulation 136 total”), the Welsh Ministers must require the scheme manager to pay to the Welsh Ministers out of the FPF the amount of the audited surplus less the un-audited regulation 136 total;
- (b) where the audited surplus is less than the un-audited regulation 136 total, the amount of the un-audited regulation 136 total less the audited surplus is not payable under paragraphs (1)(a) or (c) or regulation 136(1) or (2) and, if already paid, the Welsh Ministers must repay it to the scheme manager;
- (c) where no amount was paid or payable to the Welsh Ministers by the scheme manager in relation to the relevant financial year under paragraphs (1)(a) or (c) or regulation 136(1) or (2), the Welsh Ministers must require the scheme manager to pay to the Welsh Ministers the amount of the audited surplus; and
- (d) any amount paid or payable by the Welsh Ministers to the scheme manager in relation to that year under regulation 135(1) or (2) or regulation 137(1)(a) or (c) is not payable and, if already paid, the scheme manager must repay it to the Welsh Ministers.

(3) The Welsh Ministers must give to the scheme manager, on or before 3 July in the financial year after the relevant financial year (“the second year”), written notice of the amount of the payment that the Welsh Ministers require the scheme manager to make under paragraph (1)(a) or (c).

(4) Where the Welsh Ministers or the scheme manager, as the case maybe, are required to make a payment or repayment under paragraph (1), it must be made before the end of July in the second year or as soon as reasonably practicable thereafter.

(5) The Welsh Ministers must give to the scheme manager, on or before 3 July in the financial year that is the second financial year after the relevant financial year (“the third year”), written notice of the amount of any payment that the Welsh Ministers require the scheme manager to make under paragraph (2)(a) or (c).

(6) Where the Welsh Ministers or the scheme manager, as the case may be, are required to make a payment or repayment under paragraph (2) of this regulation, it must be made before the end of July in the third year or as soon as reasonably practicable thereafter.

### Duty to provide information

**139.**—(1) The scheme manager must provide the Welsh Ministers with such information relevant to the exercise of the Welsh Ministers’ functions under this Part as the Welsh Ministers may, by written notice, require.

(2) The scheme manager must provide the information required within the period of time specified by the Welsh Ministers in that notice or within such additional period as may be allowed by the Welsh Ministers.

## PART 10

### Transfers

#### CHAPTER 1

##### Preliminary

### Application of this Part

**140.** This Part—

- (a) supplements the rights conferred by or under Chapter 4 of Part 4 of PSA 1993 (transfer values) and is without prejudice to that Chapter; and
- (b) supplements the rights conferred by or under Chapter 5 of that Part (early leavers: cash transfer sums and contribution refunds)(62) and is without prejudice to that Chapter.

### Interpretation in relation to this Part

**141.** In this Part—

“cash equivalent” (“*cyfwerth ariannol*”) means an amount calculated in accordance with regulations made under section 97 of PSA 1993;

“club transfer value” (“*gwerth trosglwyddiad clwb*”), 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 that are in use on the date used for the calculation;

“guarantee date” (“*dyddiad gwarant*”) has the meaning given in regulation 144 (statement of entitlement);

“guaranteed cash equivalent” (“*cyfwerth ariannol gwarantedig*”), in relation to calculating the transfer value of accrued rights to benefits under this scheme, means the cash equivalent of those benefits as at the guarantee date, as specified in a statement of entitlement;

“statement of entitlement” (“*datganiad o hawlogaeth*”), in relation to an active or deferred member’s accrued rights to benefits under this scheme, means a statement by the scheme manager of the cash equivalent or club transfer value of those benefits as at the guarantee date; and

“transfer value” (“*gwerth trosglwyddiad*”) means, for accrued rights to benefits other than accrued earned pension which are the subject of a club transfer—

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(62) Chapter 5 of Part 4 of PSA 1993 was inserted by section 264 of the Pensions Act 2004 (c. 35).

- (a) for accrued rights to benefits under this scheme, an amount equal to—
  - (i) the guaranteed cash equivalent of those benefits, or
  - (ii) the guaranteed cash equivalent together with any increase payable under regulation 146 (calculating amount of a transfer value or club transfer value), and
- (b) for accrued rights to benefits 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.

## CHAPTER 2

### Transfers out

#### Transfer payments made to other schemes or pension arrangements

**142.**—(1) A transfer payment may only be made in respect of the accrued rights to benefits of an active or deferred member of this scheme.

(2) A transfer payment may only be made to—

- (a) a registered pension scheme that is not a connected scheme; or
- (b) a pension arrangement that is a qualifying recognised overseas pension scheme for the purposes of Part 4 of FA 2004 (see section 169(2) of that Act)(**63**).

(3) A transfer payment may not be made in respect of rights that are attributable (directly or indirectly) to a pension credit.

(4) A member may only require the scheme manager to use a transfer payment in a way specified in section 95(2) of PSA 1993(**64**).

(5) A member may only require the scheme manager to make a club transfer value payment during the period of 12 months beginning with the day on which the member becomes eligible to be an active member of the scheme to which the payment is to be made.

(6) The whole of the transfer payment must be made in accordance with the provisions of this regulation.

(7) If section 96(2) of PSA 1993 (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member's other rights) applies(**65**), benefits attributable to the following may be excluded from the transfer payment—

- (a) the member's accrued rights to a guaranteed minimum pension; and
- (b) the member's accrued rights attributable to service in contracted-out employment, within the meaning of Part 3 of PSA 1993, on or after 6 April 1997.

#### Application for a statement of entitlement

**143.**—(1) This regulation applies in relation to an active or deferred member of this scheme (P) who requires a transfer payment to be made in respect of P's accrued rights to benefits under this scheme.

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(63) Section 169(2) was amended by the Finance Act 2013 (c. 29), section 53(3).

(64) Section 95(2) was amended by S.I. 2001/3649.

(65) Section 96(2) was amended by the Pensions Act 2007 (c. 22), Schedule 7, paragraph 1; the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 13, paragraph 1; the Pensions Act 1995 (c. 26), Schedule 5, paragraph 63(a) and S.I. 2011/1730.

(2) Before requesting a transfer payment, P must apply for a statement of entitlement by written notice to the scheme manager.

(3) P may withdraw the application by written notice to the scheme manager at any time before the statement is provided.

(4) P may make a second application in the period of 12 months beginning with the date of the first application.

### **Statement of entitlement**

**144.**—(1) The scheme manager must specify in the statement of entitlement the date by reference to which the cash equivalent or club transfer value is calculated (“the guarantee date”).

(2) Unless paragraph (4) applies, the guarantee date must fall within both the following periods—

- (a) the three months beginning with the date of the member’s application for the statement of entitlement (“the three month period”); and
- (b) the 10 days ending with the date on which the member is provided with that statement (“the 10 day period”).

(3) In counting the 10 day period, Saturdays, Sundays, Christmas Day, New Year’s Day and Good Friday are excluded.

(4) The scheme manager may specify in the statement of entitlement a guarantee date that falls within the six months beginning with the date of the member’s application for the statement of entitlement if—

- (a) for reasons beyond the control of the scheme manager, the information needed to calculate the amount of the cash equivalent or club transfer value cannot be obtained before the end of the three month period; and
- (b) the scheme manager considers it reasonable to specify a guarantee date that falls outside the three month period.

### **Request for transfer payment to be made**

**145.**—(1) An active or a deferred member of this scheme who is provided with a statement of entitlement may request a transfer payment to be made in respect of the member’s accrued rights to benefits under this scheme.

(2) The request for transfer payment must be made by written notice to the scheme manager and specify the pension scheme or other pension arrangement to which the transfer payment is to be made.

(3) A deferred member must exercise the right to apply for the payment of a club transfer value on or before the earlier of the day before the deferred member attains the deferred pension age and the end of the period of 12 months beginning with the date on which the deferred member ceased to be an active member of the scheme.

(4) A deferred member must exercise the right to apply for the payment of a transfer value on or before the day before the deferred member attains the deferred pension age.

(5) Subject to paragraph (6), the member by written notice to the scheme manager may withdraw the request at any time before the transfer payment is made.

(6) The member may not withdraw the request if an agreement for the use of the whole or part of the transfer payment has already been entered into with a third party.

### Calculating the amount of a transfer value or club transfer value

**146.**—(1) Subject to paragraphs (2) and (3), the amount of the transfer value is to be calculated in accordance with actuarial guidance as at the guarantee date.

(2) If a transfer value is paid later than six months after the guarantee date, the amount of the guaranteed cash equivalent must be increased in accordance with regulations made under section 97 (calculation of cash equivalents) of PSA 1993<sup>(66)</sup>.

(3) If a club transfer value is paid later than six 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.

(4) If the transfer value or club transfer value is less than the minimum transfer value, the amount of the transfer value or club transfer value must be increased so that it is equal to the amount of the minimum transfer value.

(5) In this regulation—

“the minimum transfer value” (“*y lleiafswm gwerth trosglwyddo*”) means the total of—

- (a) the sum of all member contributions and added pension payments made by the member; and
- (b) the sum of all transfer payments received by this scheme in relation to the member.

### Effect of transfers-out

**147.** If a transfer payment is made under this Chapter in respect of a member’s accrued rights to benefits under this scheme, those rights are extinguished.

## CHAPTER 3

### Transfers in

### Application of Chapter

**148.** This Chapter applies in relation to an active member of this scheme who has accrued rights under another pension scheme (P).

### Interpretation of Chapter

**149.** In this Chapter—

“another pension scheme” (“*cynllun pensiwn arall*”) means—

- (a) another occupational pension scheme that is a registered pension scheme but is not a connected scheme,
- (b) a qualifying recognised overseas pension scheme for the purposes of Part 4 of FA 2004, or
- (c) a personal pension scheme;

“club transfer value statement” (“*datganiad gwerth trosglwyddiad clwb*”) means a statement under regulation 153 (club transfer value statement) of the amount of club transfer earned pension;

“transfer date” (“*dyddiad trosglwyddo*”) means the earlier of—

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<sup>(66)</sup> Section 97 was amended by the Pensions Act 1995 (c. 26), Schedule 6, paragraph 4, and the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 8.



- (a) if the scheme manager has provided a transfer statement or a club transfer value statement, the last day of the period of two months beginning with the date of the statement, or
  - (b) the day on which the transfer payment is received by the scheme manager;
- “transfer payment request” (*“cais am daliad trosglwyddo”*) means a request to the scheme manager under this Chapter that a transfer payment be accepted from another pension scheme; and “transfer statement” (*“datganiad trosglwyddo”*) means a statement under regulation 151 (transfer statement).

### **Request for acceptance of a transfer payment**

**150.**—(1) P may by written notice to the scheme manager request that a transfer payment be accepted in respect of some or all of P’s accrued rights under another pension scheme.

(2) A transfer payment request—

- (a) must specify—
  - (i) the pension scheme from which the transfer payment is requested to be made, and
  - (ii) the anticipated amount of the transfer payment; and
- (b) subject to paragraph (3), must be made before the beginning of the period of one year ending with the date on which the member reaches normal pension age.

(3) A request that a transfer payment be accepted from a non-occupational pension scheme must be made during the period of one year beginning with the day on which the member becomes an active member or such longer period as the scheme manager may allow.

(4) On receiving a transfer payment request, the scheme manager may accept the transfer payment.

### **Transfer statement**

**151.**—(1) This regulation applies in relation to—

- (a) a request for a transfer payment to be accepted from another pension scheme that is not a club scheme; and
- (b) a request for a transfer payment in respect of added pension to be accepted from another club scheme.

(2) The scheme manager may require that, before making a transfer payment request, P must ask the scheme manager of the other scheme to provide a statement of the amount of transferred pension, calculated in accordance with actuarial guidance, that P will be entitled to count under regulation 152 (amount of transferred pension) provided that the transfer date falls within the period of two months beginning with the date of that statement.

### **Amount of transferred pension**

**152.**—(1) This regulation applies in relation to—

- (a) any transfer payment received in relation to P from another pension scheme that is not a club scheme; and
- (b) any transfer payment in respect of added pension received in relation to P from another club scheme.

(2) For the scheme year in which the transfer date falls, the amount of transferred pension which P is entitled to count in respect of the transfer payment is—

- (a) the amount specified in the transfer statement; or

- (b) if such a statement is not provided or is not calculated in accordance with actuarial guidance, an amount calculated by the scheme manager in accordance with actuarial guidance.

#### **Club transfer value statement**

**153.**—(1) This regulation applies in relation to a request for a club transfer value payment to be accepted from another club scheme.

(2) The scheme manager may require that, before making the transfer payment request, P must ask the scheme manager of the sending scheme to provide a statement of the amount of club transfer earned pension, calculated in accordance with actuarial guidance, that P will be entitled to count under regulation 154 (amount of club transfer earned pension) provided that the transfer date falls within the period of two months beginning with the date of that statement.

(3) The statement must specify the basis on which an amount of accrued earned pension is revalued under the sending scheme while a member is in pensionable service under that scheme.

#### **Amount of club transfer earned pension**

**154.**—(1) This regulation applies in relation to a club transfer value payment received from another club scheme.

(2) For the scheme year in which the transfer date falls, the amount of club transfer earned pension which P is entitled to count is—

- (a) the amount specified in the club transfer value statement; or
- (b) if such a statement is not provided or is not calculated in accordance with actuarial guidance, an amount calculated by the scheme manager in accordance with actuarial guidance.

### **CHAPTER 4**

#### **Transfer of pension account entries to another scheme manager**

#### **Requirement for scheme manager to provide a certificate**

**155.**—(1) A scheme manager must provide an active member who has ceased to be employed by one employer in scheme employment and has taken up scheme employment with another authority with a certificate stating—

- (a) the entries in the pension account, or pension accounts if more than one, at the date of the certificate;
- (b) the period of pensionable service in the scheme employment, or employments, with the employer; and
- (c) the date on which the certificate is given.

(2) Where a deferred member has taken up scheme employment with another authority after a gap in pensionable service not exceeding five years, the member must request the scheme manager in relation to the earlier period of pensionable service to provide the member with a certificate stating—

- (a) the entries in the pension account, or pension accounts if more than one, at the date of the certificate;
- (b) the period of pensionable service in the scheme employment, or employments, with that employer;
- (c) the date on which the member had ceased to be employed in scheme employment by that employer; and

- (d) the date on which the certificate is given.
- (3) Where a scheme manager is required to provide a certificate under paragraph (1) and the scheme manager had established an added pension account for that member, the scheme manager must provide the member with a certificate stating—
  - (a) the entries in the added pension account at the date of the certificate;
  - (b) the date on which the certificate is given; and
  - (c) details of the member's added pension election where the contributions period has not ended.
- (4) Where a scheme manager is required to provide a certificate under paragraph (2), or where a deferred member intends to make an added pension election having taken up scheme employment after a gap in pensionable service exceeding five years, and the scheme manager in relation to a previous period of pensionable service had established an added pension account, the scheme manager must provide the member with a certificate, where the member requests one, stating—
  - (a) the entries in the pension account at the date of the certificate;
  - (b) the date on which the member had ceased to be employed in scheme employment by that employer; and
  - (c) the date on which the certificate is given.
- (5) Where an active member has two or more active member's accounts with two or more different scheme managers, and the member intends to make, or has made, an added pension election, the member may request a certificate from the scheme manager who established the added pension account in order that that certificate may be provided to another scheme manager (B) in respect of a different active member's account so that the entries may be transferred to an added pension account established by B.
- (6) The scheme manager must provide a certificate under this regulation—
  - (a) within three months after the date on which the active member leaves scheme employment; or
  - (b) within three months after the date on which the deferred member notifies the scheme manager of the new scheme employment.

### **Request to confirm details on certificate**

**156.** Where a member has been provided with a certificate under regulation 155 (requirement for scheme manager to provide a certificate) and is dissatisfied with the information stated on the certificate, the member may, within the period of three months commencing on the date on which the certificate was received, request the scheme manager who provided the certificate to confirm the accuracy of the information contained in it or to provide an amended certificate.

### **Appeal concerning entries on the certificate**

**157.—**(1) Where a member (P) is not satisfied with the entries on the certificate, or amended certificate, after P has made a request under regulation 156 (request to confirm details on certificate), P may, by written notice given to the scheme manager who provided the certificate within 28 days of the notification date, require the scheme manager to deal with the disagreement by means of arrangements implemented by the scheme manager pursuant to the requirements of section 50 of the Pensions Act 1995<sup>(67)</sup> (resolution of disputes) and the Occupational Pension

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<sup>(67)</sup> 1995 c. 26. Section 50 was substituted by the Pensions Act 2004 (c. 35), section 273. Section 273 of the 2004 Act was amended, before coming into effect, by the Pension Act 2007 (c. 22), section 16.

Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008(68).

(2) In paragraph (1), “the notification date” (“*y dyddiad hysbysu*”) is the date on which P is treated as having received from the scheme manager confirmation of the certificate provided under regulation 155 or provision of an amended certificate following P’s request under regulation 156 (request to confirm details on certificate).

### **Transfer of pension account entries**

**158.**—(1) A member who has been provided with a certificate under paragraph (1), (2), (3) or (4) of regulation 155 (requirement for scheme manager to provide a certificate) must give the certificate to the member’s new scheme employer.

(2) The new scheme employer must request the scheme manager who gave the certificate to confirm that the member has provided certificates in respect of all pension accounts for which that employer was the scheme manager.

(3) The scheme manager who gave the certificate must confirm to the new employer that the member has provided certificates in respect of all pension accounts for which that employer was the scheme manager.

(4) After the confirmation has been provided by the scheme manager, the new scheme employer must transfer the appropriate entries from the certificate to the new active member’s pension account which has been established under regulation 40 (establishment of active member’s account) and, where the member had an added pension account, transfer the appropriate entries from the certificate provided in respect of that account to the new added pension account established under regulation 47 (establishment of added pension account).

(5) When the transfer of entries has been completed under paragraph (4), the new scheme manager must inform the former scheme manager that the transfer has taken place and the former scheme manager must close all pension accounts relating to the certificates provided in respect of the member.

(6) If the number of pension accounts in respect of which details have been provided by the former scheme manager under paragraph (1) or (2) of regulation 155 (requirement for scheme manager to provide a certificate) is greater than the number of active member’s accounts established by the new scheme manager, the member must decide, following consultation with the new scheme manager, from which pension account entries must be transferred to the new active member’s account or accounts and notify the former scheme manager.

(7) Where paragraph (6) applies and there are one or more pension accounts from which entries are not transferred, those accounts must be closed and the former scheme manager must establish a deferred member’s account in respect of each of those accounts.

(8) Where a member has taken up scheme employment with two or more employers and intends to make an added pension election, the member may choose to which scheme manager the certificate provided under paragraph (3) or (4) of regulation 155 (requirement for scheme manager to provide a certificate) is to be given.

(9) The scheme manager is not required to make any payment to the new scheme manager in connection with the transfer of a pension account.

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(68) [S.I. 2008/649](#).

## PART 11

### Actuarial valuations

#### Appointment of scheme actuary and actuarial valuations

**159.**—(1) The Welsh Ministers must appoint an individual to provide a consulting service on actuarial matters in relation to this scheme and any connected scheme.

(2) The scheme actuary is responsible for—

- (a) carrying out valuations of this scheme and any connected scheme; and
- (b) preparing reports on the valuations.

(3) Before appointing an individual as scheme actuary the Welsh Ministers must be satisfied that the individual is appropriately qualified to carry out valuations of this scheme and any connected scheme in accordance with Treasury directions made under section 11 of the 2013 Act (“the Treasury directions”).

(4) A scheme manager must provide the scheme actuary with any data that the scheme actuary requires in order to carry out a valuation and prepare a report on the valuation.

(5) A valuation of the scheme and any connected scheme and the preparation of a report on the valuation must be carried out in accordance with the Treasury directions.

(6) Valuations of the scheme must be carried out within a time-frame which enables requirements in the Treasury directions regarding dates which are applicable to the valuation to be met.

#### Employer cost cap

**160.**—(1) The employer cost cap for this scheme is 17.1% of pensionable earnings of members of this scheme.

(2) Where the cost of this scheme, calculated following a valuation in accordance with the Treasury directions, is more than the margins specified in regulations made under section 12(5) of the 2013 Act<sup>(69)</sup> (“the Cost Cap Regulations”) above or below the employer cost cap, the Welsh Ministers must follow the procedure specified in paragraph (3) for reaching agreement with the scheme managers, employers and members (or representatives of employers and members) as to the steps required to achieve the target cost specified in the Cost Cap Regulations.

(3) The procedure specified for the purposes of section 12(6)(a) of the 2013 Act is consultation for such period as the Welsh Ministers consider appropriate with the Firefighters’ Pension Scheme Advisory Board for Wales with a view to reaching an agreement endorsed by all members of that Board.

(4) If, following such consultation, agreement is not reached within 3 months of the end of the consultation period, the Welsh Ministers must take steps to adjust the rate at which benefits accrue under regulation 43 (amount of pension for a scheme year) so that the target cost for this scheme is achieved.

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<sup>(69)</sup> See regulation 3 of [S.I. 2014/575](#).

## PART 12

### Determinations and appeals

#### CHAPTER 1

##### Determinations and role of IQMP

##### **Determinations by the scheme manager**

**161.** The scheme manager must determine whether a person is entitled to an award or to retain an award.

##### **Role of IQMP in determinations by the scheme manager**

**162.—**(1) In making a determination as to whether a person is entitled to an award, or to retain an award, where the determination as to entitlement depends in part on the ill-health or capacity of the person who would be so entitled, the scheme manager must obtain the written opinion of the IQMP on any issue which is wholly or partly of a medical nature.

(2) The scheme manager must request an IQMP to provide an opinion on the following issues for the purpose of determining any question arising under this scheme—

- (a) whether a person is incapable of performing any duties of the role in which that person was last employed because of incapacity of mind or body;
- (b) whether the incapacity in sub-paragraph (a) above is likely to continue until normal pension age or deferred pension age, as the case may be;
- (c) whether a person has become capable of performing any duties of the role from which that person retired on grounds of ill-health;
- (d) whether a person is or has become capable of undertaking regular employment; or
- (e) any other issue wholly or partly of a medical nature.

(3) Subject to paragraph (6), the IQMP must certify under paragraph (2) that—

- (a) the IQMP has not previously advised, or given an opinion on, or otherwise been involved in, the particular case for which the opinion has been requested; and
- (b) the IQMP is not acting, and has not at any time acted, as the representative of the member, the scheme manager, or any other party in relation to the same case.

(4) An IQMP's opinion under paragraph (2) is binding on the scheme manager unless it is superseded by the IQMP's response under regulation 163(2) (review of medical opinion) or the outcome of an appeal under regulation 164 (appeals against determinations based on medical evidence).

(5) The IQMP's response under regulation 163 (review of medical opinion) or the outcome of an appeal under regulation 164 (appeals against determinations based on medical evidence), as the case may be, is binding on the scheme manager.

(6) Where, in consequence of an opinion given under paragraph (2), a member has retired on the grounds of ill-health, the IQMP who gave the opinion may, if so requested by the scheme manager for the purposes of a review under regulation 77(1) (review of ill-health award or early payment of retirement pension), give a further opinion.

(7) If—

- (a) a person wilfully or negligently fails to submit to medical examination by the IQMP selected by the scheme manager; and
- (b) the IQMP is unable to give an opinion on the basis of the medical evidence available,

the scheme manager may make a determination on the issue on such other medical evidence as the scheme manager thinks fit, or without medical evidence.

(8) Within 14 days of making a determination under these Regulations, the scheme manager must—

- (a) give written notice of it to the person concerned; and
- (b) in the case of a determination on an issue wholly or partly of a medical nature, unless paragraph (7) applies, supply that person with a copy of the opinion obtained under paragraph (2).

### **Review of medical opinion**

**163.**—(1) Where—

- (a) new evidence on an issue wholly or partly of a medical nature is presented to the scheme manager by a member (P) in respect of whom a determination has been made under these Regulations;
- (b) the scheme manager receives that evidence—
  - (i) where a copy of an opinion was supplied in accordance with regulation 162(8) (role of IQMP in determinations by the scheme manager), within 28 days of the receipt by P of that copy, and
  - (ii) in any other case, within 28 days of the receipt by P of notice of the scheme manager's determination; and
- (c) the scheme manager and P agree that the IQMP must be given the opportunity of reviewing that opinion in the light of the new evidence,

the scheme manager must send a copy of the new evidence to the IQMP and invite the IQMP to reconsider that opinion.

(2) An IQMP's response to an invitation under paragraph (1) must be in writing.

(3) An IQMP's response under paragraph (2) is binding on the scheme manager unless it is superseded by the outcome of an appeal under regulation 164 (appeals against determinations based on medical evidence).

(4) As soon as reasonably practicable after receiving a response under paragraph (2), the scheme manager must reconsider its determination.

(5) Within 14 days of that reconsideration, the scheme manager must—

- (a) give written notice to P that it has confirmed its determination or revised its determination (as the case may be);
- (b) if it has revised its determination, supply P with written notice of the revised determination; and
- (c) supply P with a copy of the response under paragraph (2).

## **CHAPTER 2**

### **Appeals to Board of Medical Referees**

#### **Appeals against determinations based on medical evidence**

**164.**—(1) A member (P) who wishes to appeal against a scheme manager's determination on an issue of a medical nature may do so to a board of medical referees in accordance with the provisions of regulations 165 (notice of appeal) to 172 (notices etc).

(2) Subject to paragraph (3), where a determination is—

- (a) made with regard to an opinion obtained under regulation 162(2) (role of IQMP in determinations by the scheme manager) or medical evidence relied on as mentioned in regulation 162(7); or
- (b) reconsidered under regulation 163(4) (review of medical opinion) with regard to a response under paragraph (2) of that regulation,

the scheme manager must, within 14 days of making, confirming or revising the determination (as the case may be), send to P the documents mentioned in paragraph (4).

(3) Nothing in paragraph (2) requires the supply of documents that have already been supplied under regulation 162(8) or 163(5).

(4) The documents are—

- (a) a copy of the opinion, response or evidence (as the case may be);
- (b) an explanation of the procedure for appeals under this Chapter; and
- (c) a statement that if P wishes to appeal against the scheme manager's determination on an issue of a medical nature, P must give written notice to the scheme manager, stating P's name and address and the grounds of appeal, not later than 28 days after P receives the last of the documents required to be supplied under this paragraph, or within such longer period as the scheme manager may allow.

### **Notice of appeal**

**165.**—(1) Subject to paragraph (2), written notice of appeal against a determination on an issue of a medical nature stating—

- (a) the appellant (P)'s name and address; and
- (b) the grounds of the appeal,

must be given to the scheme manager within 28 days of the date on which P receives the documents referred to in regulation 164(4) (appeals against determinations based on medical evidence); and where P receives those documents on different dates, they are to be treated for this purpose as received on the later or latest of those dates.

(2) Where—

- (a) notice of appeal is not given within the period specified in paragraph (1); but
- (b) the scheme manager is of the opinion that P's failure to give it within that period was not due to P's own default,

the scheme manager may extend the period for giving notice for such length, not exceeding six months from the date mentioned in paragraph (1), as the scheme manager considers appropriate.

### **Reference of appeal to the board**

**166.**—(1) On receiving a notice of appeal, the scheme manager must supply the Welsh Ministers with three copies of—

- (a) the notice of appeal;
- (b) the notice of the relevant determination;
- (c) the opinion, response or evidence (as the case may be) supplied to the appellant (P); and
- (d) every other document in its possession or under its control which appears to it to be relevant to the issue that is the subject of the appeal.

(2) The Welsh Ministers must refer an appeal to a board of medical referees ("the board").



(3) The board is to consist of not less than three medical practitioners appointed by, or in accordance with arrangements made by, the Welsh Ministers.

(4) One member of the board must be a specialist in a medical condition relevant to the appeal.

(5) One member of the board must be appointed as chairman.

(6) Where there is an equality of votes among the members of the board, the chairman is to have a second or casting vote.

(7) As soon as reasonably practicable after referring an appeal to the board, the Welsh Ministers must supply the board's administrator with three copies of every document supplied under paragraph (1).

(8) The board must arrange for one of their number to review those documents ('the reviewing member').

(9) As soon as reasonably practicable after concluding the review, the reviewing member must give written notice to the Welsh Ministers—

(a) of any other information which the reviewing member considers would be desirable so as to provide the board with sufficient information for the purpose of enabling the board to determine the appeal; and

(b) if it is the case, that it is the reviewing member's opinion that the board may regard the appeal as frivolous, vexatious or manifestly ill-founded.

(10) On receipt of the reviewing member's notice the Welsh Ministers must—

(a) where the reviewing member has notified the Welsh Ministers of the desirability of obtaining other information, require the scheme manager to use its best endeavours to obtain that information; and

(b) where the notice contains an opinion of the description mentioned in paragraph (9)(b), send a copy of it to the scheme manager.

(11) A scheme manager which receives a copy of a reviewing member's opinion must, as soon as reasonably practicable—

(a) send a copy of it to P; and

(b) by written notice to P—

(i) advise P that if P's appeal is unsuccessful, P may be required to pay the scheme manager's costs, and

(ii) require P to notify it within 14 days of the date of the notice whether P intends to pursue or withdraw the appeal.

(12) A scheme manager which notifies P under paragraph (11)(b) must inform the Welsh Ministers of P's response to the notice under sub-paragraph 11(b); and the Welsh Ministers must notify the board accordingly.

### **Procedure where appeal to be pursued**

**167.**—(1) Where an appeal is to be pursued, the board must secure that the appellant (P) and the scheme manager ("the parties") have been informed—

(a) that the appeal is to be determined by the board; and

(b) of an address to which communications relating to the appeal may be delivered to the board.

(2) Subject to paragraph (5), the board—

(a) must interview and medically examine P at least once; and

- (b) may interview or medically examine P or cause P to be interviewed or medically examined on such further occasions as the board thinks necessary for the purpose of determining the appeal.
- (3) The board must appoint, and give the parties not less than two months' notice of, the time and place for every interview and medical examination; and if the board is satisfied that P is unable to travel, the place must be P's place of residence.
- (4) P must attend at the time and place appointed for any interview and medical examination by the board or any member of the board or any person appointed by the board for that purpose.
- (5) If—
  - (a) P fails to comply with paragraph (4); and
  - (b) the board is not satisfied that there was a reasonable cause for the failure,
 the board may dispense with the interview and medical examination and may determine the appeal on such information as is then available.
- (6) Any interview under this regulation may be attended by persons appointed for the purpose by the scheme manager or by P or by each of them.
- (7) Where either party intends to submit written evidence or a written statement at an interview held under paragraph (2), the party must, subject to paragraph (8), submit the evidence or statement to the board and to the other party not less than 28 days before the date appointed for the interview.
- (8) Where any written evidence or statement has been submitted under paragraph (7) less than 28 days before the date appointed for the interview, any written evidence or statement in response may be submitted by the other party to the board and the party submitting the first-mentioned evidence or statement at any time up to, and including, that date.
- (9) Where any written evidence or statement is submitted in contravention of paragraph (7), the board may postpone the date appointed for the interview and require the party who submitted the evidence or statement to pay such reasonable costs of the board and of the other party as arise from the postponement.

### **The board's report**

- 168.**—(1) The board must supply the Welsh Ministers with—
- (a) a written report of its decision on the relevant medical issues; and
  - (b) if the board is of the opinion that the appeal was frivolous, vexatious or manifestly ill-founded, a statement to that effect (which may form part of the report).
- (2) The Welsh Ministers must supply the parties with a copy of the report and of any separate statement under paragraph (1)(b).

### **Reconsideration by the board**

- 169.**—(1) Where—
- (a) the parties have received a copy of the report supplied under regulation 168 (the board's report), and
  - (b) the parties agree that the board has made an error of fact which materially affects the board's decision,
- the scheme manager must within 28 days of receipt of the report, supply the Welsh Ministers with two copies of a statement agreed between the parties.
- (2) The agreed statement must set out—
- (i) the error of fact,

- (ii) the correct fact, and  
invite the board to reconsider its decision.
- (3) The Welsh Ministers must within 14 days of receipt of the statement supply a copy of it to the board.
- (4) As soon as reasonably practicable after receiving the statement, the board must reconsider its decision.
- (5) Within 14 days of that reconsideration the board must—
  - (a) give written notice to the Welsh Ministers that it has confirmed its decision or revised its decision (as the case may be); and
  - (b) if it has revised its decision, supply the Welsh Ministers with a written report of its revised decision.
- (6) The Welsh Ministers must supply to the parties a copy of the written notice confirming the board's decision or a copy of the written report of the board's revised decision (as the case may be).

#### **Fees and allowances payable to the board**

- 170.**—(1) There must be paid to the board and the reviewing member—
- (a) such fees and allowances (including those payable to the reviewing member for work undertaken on the review of documents under regulation 166(8) (reference of appeal to the board)) as are determined in accordance with arrangements made by the Welsh Ministers; or
  - (b) where no such arrangements have been made, such fees and allowances as the Welsh Ministers may from time to time determine.
- (2) The fees and allowances payable under paragraph (1) must—
- (a) be paid by the scheme manager; and
  - (b) be treated for the purposes of regulation 171 (expenses of each party) as part of the scheme manager's expenses.

#### **Expenses of each party**

- 171.**—(1) Subject to regulation 167(9) (procedure where appeal to be pursued) and paragraphs (2) to (5) below, the expenses of each party to the appeal must be borne by that party.
- (2) Where the board—
- (a) determines an appeal in favour of the scheme manager; and
  - (b) states that, in its opinion, the appeal was frivolous, vexatious or manifestly ill-founded,
- the scheme manager may require the appellant (P) to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board and the reviewing member under regulation 170(1) (fees and allowances payable to the board), as the scheme manager considers appropriate.
- (3) Where—
- (a) P gives notice to the board—
    - (i) withdrawing the appeal, or
    - (ii) requesting cancellation of, postponement of, or adjournment of the date appointed for an interview or medical examination under regulation 167(3), and
- the notice is given less than 22 working days before the date appointed under regulation 167(3); or

(b) P's acts or omissions cause the board to cancel, postpone or otherwise adjourn the date appointed under regulation 167(3) less than 22 working days before the date appointed, the scheme manager may require P to pay it such sum, not exceeding the total amount of the fees and allowances payable to the board under regulation 170(1) (fees and allowances payable to the board), as the scheme manager considers appropriate.

(4) Where the board—

- (a) determines an appeal in favour of P; and
- (b) does not otherwise direct,

the scheme manager must refund to P the amount specified in paragraph (5).

(5) The amount is the total of—

- (a) any personal expenses actually and reasonably incurred by P in respect of any interview under regulation 167(2); and
- (b) if any such interview was attended by a qualified medical practitioner appointed by P, any fees and expenses reasonably paid by P in respect of such attendance.

(6) For the purposes of paragraphs (2) and (4), any question arising as to whether the board's determination is in favour of the scheme manager or of P is to be decided by the board or, in default, by the Welsh Ministers.

#### **Notices etc.**

**172.** Any notice, information or document which an appellant (P) is entitled to receive for any purpose of regulations 164 (appeals against determinations based on medical evidence) to 171 (expenses of each party) is, unless the contrary is proved, to be treated as having been received by P if it was posted in a letter addressed to P at P's last known place of residence.

### **CHAPTER 3**

#### **Appeals on other issues**

#### **Appeals on other issues**

**173.** Where—

- (a) a member (P) disagrees with a scheme manager's determination under regulation 161 (determinations by the scheme manager); and
- (b) the disagreement does not involve an issue of a medical nature,

P may, by written notice given to the scheme manager within 28 days of receipt of the determination, require the scheme manager to deal with the disagreement by means of the arrangements implemented by it pursuant to the requirements of section 50 of the Pensions Act 1995<sup>(70)</sup> (requirement for dispute resolution arrangements) and the Occupational Pension Schemes (Internal Dispute Resolution Procedures Consequential and Miscellaneous Amendments) Regulations 2008<sup>(71)</sup>.

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<sup>(70)</sup> 1995 c. 26. Section 50 has been substituted by virtue of section 273 of the [Pensions Act 2004](#) ( c. 35).

<sup>(71)</sup> [S.I. 2008/649](#).

## PART 13

### Supplementary

#### CHAPTER 1

##### Payment of pensions

##### **Late payment of retirement index adjustment**

**174.** Nothing in these Regulations requires any part of a pension attributable to a retirement index adjustment to be paid before the end of the last active scheme year.

##### **Recovery of overpayment of benefits**

**175.—**(1) This regulation applies in respect of a financial year for which a percentage decrease in earnings is specified in an order made under section 9 of the 2013 Act<sup>(72)</sup>.

(2) The scheme manager must recover any overpayment of benefits that has occurred as a result of the application of the retirement index adjustment for that year.

(3) When this regulation applies, the scheme manager must notify the member in writing that the amount of the overpayment is to be recovered by reducing the amount of each instalment of pension until the amount of the overpayment is recovered or by omitting to pay any increase in the amount of any pension due until the amount of the overpayment is recovered.

##### **Guaranteed minimum pension**

**176.—**(1) If a member has a guaranteed minimum in relation to benefits under this scheme—

- (a) nothing in these Regulations permits or requires anything that would cause requirements made by or under PSA 1993 in relation to such a member and such a member's rights under this scheme not to be met in the case of the member;
- (b) nothing in these Regulations prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member; and
- (c) the following provisions are subject to the generality of this paragraph.

(2) If apart from this regulation—

- (a) no pension would be payable to the member under this scheme; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

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

(3) Subject to paragraph (4), if—

- (a) on reaching GMP age the member is still in employment (whether or not it is scheme employment); and
- (b) if it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

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

(4) If the member continues in employment for a further five years after reaching GMP age and does not then leave employment, the member is entitled from the end of that period to so much

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<sup>(72)</sup> Under section 9 of the 2013 Act the change in earnings to be applied in a period is the percentage increase or decrease as a Treasury order under that section may specify in relation to the period.

of the member's pension under Part 5 (retirement benefits) and Part 7 (benefits for pension credit members) as equals the member's guaranteed minimum (or, as the case may be, to so much of the member's pensions under Part 5 and Part 7 as together have a weekly rate equal to the member's guaranteed minimum), unless the member consents to a further postponement of the entitlement.

(5) In the circumstances provided for in paragraph (3) or (4), the amount of the guaranteed minimum to which the member is entitled under this regulation is increased in accordance with section 15 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) of PSA 1993.

(6) If—

- (a) before reaching the age of 65 the member becomes entitled to the immediate payment of a pension; and
- (b) the member has a guaranteed minimum in relation to the whole or part of a pension as a result of receipt by this scheme of a transfer payment from another pension scheme in respect of which the member had such a guaranteed minimum,

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

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out employment, within the meaning of Part 3 of PSA 1993 (certification of pension schemes and effects on members' state scheme rights and duties), by reference to this scheme and either—

- (a) a transfer payment in respect of 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)(requirements for certification of schemes: general) of PSA 1993<sup>(73)</sup> ("the person's contracting-out rights"), has been made; or
- (b) the person has no rights to benefits under this scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies—

- (a) from the date on which the person reaches GMP age the person is entitled to a pension payable for life at a weekly rate equal to the person's guaranteed minimum, if any; and
- (b) from the date on which the person reaches normal pension age under this scheme the person is entitled to a lump sum and pension in respect of that person's rights under section 9(2B) of PSA 1993,

but a person falling with paragraph (7) is not to be regarded as a pensioner member for the purposes of Part 6 (death benefits).

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

- (a) that is forfeited—
  - (i) as a result of a conviction for treason, or
  - (ii) in a case where the relevant offence under regulation 181 (forfeiture: offences committed by members, surviving partners or eligible children) falls under paragraph (b) of the definition in that regulation of "relevant offence" (Official Secrets Acts offences);
- (b) where that pension is commuted under regulation 177 (commutation of small pensions) and where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996<sup>(74)</sup> are met,

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<sup>(73)</sup> Subsection (2B) was inserted by the Pensions Act 1995 (c. 26), section 136(3) and amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 35.

<sup>(74)</sup> S.I. 1996/1172. Regulation 60 was substituted by S.I. 2006/744 and amended by 2006/1337, 2009/2930 and 2010/499.

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

(10) In this regulation, references to the amount of a pension are to its amount after the subtraction of the commutation amount, if any (but before the subtraction of the allocation amount, if any).

### **Commutation of small pensions**

**177.**—(1) This regulation applies if the pension entitlement of a member of the scheme or the pension entitlement of a member's beneficiary does not exceed the small pensions commutation maximum.

(2) Unless the member has reached deferred pension age, this regulation does not apply if the pension entitlement of the member or the member's beneficiary is equal to or exceeds the member's guaranteed minimum.

(3) The scheme manager may pay the member, surviving partner or eligible child a lump sum of an amount as represents the cash value of the pension calculated in accordance with actuarial guidance if—

- (a) the person consents to receipt of a lump sum in respect of the pension; and
- (b) the requirements of the commutation provisions that apply in the circumstances are met.

(4) The payment of a lump sum under this regulation in place of a pension discharges all liabilities under this scheme in respect of that pension.

(5) In this regulation—

“the commutation provisions” (*“y darpariaethau cymudo”*) means the provisions permitting the commutation of pensions set out in—

- (a) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(75)</sup>,
  - (b) paragraph 7 of Schedule 29 (authorised lump sums-supplementary) to FA 2004 (which defines trivial commutation lump sums for the purposes of Part 4 of that Act)<sup>(76)</sup> and, in relation to a pension payable under Part 6 (death benefits), paragraph 20 of that Schedule (which defines trivial commutation lump sum death benefit for the purposes of Part 4 of that Act)<sup>(77)</sup>, and
  - (c) regulation 3 of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(78)</sup>; and
- “the small pensions commutation maximum” (*“yr uchafswm cymudo pensiynau bach”*) means the amount that is permitted to be commuted, having regard to the commutation provisions that apply in the circumstances.

### **Payments for persons incapable of managing their affairs**

**178.** If it appears to the scheme manager that a person other than an eligible child is entitled to payment of benefits under this scheme but is, by reason of mental incapacity or otherwise, incapable of managing their affairs—

- (a) the scheme manager may pay the benefits or any part of them to a person having the care of the person entitled, or such other person as the scheme manager may determine, to be applied for the benefit of the person entitled; and

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<sup>(75)</sup> [S.I. 1997/785](#). Regulation 2 was amended by [S.I. 2002/681](#), [2005/706](#), [2006/744](#), [2006/778](#) and [2009/2930](#).

<sup>(76)</sup> Paragraph 7 was amended by the Finance Act 2011 (c. 11), Schedule 16, paragraphs 23 and 29 and Schedule 18, paragraphs 1, 3, and 4; the Finance Act 2014 (c. 26), section 42(1); and [S.I.2006/572](#).

<sup>(77)</sup> Paragraph 20 was amended by the Finance Act 2011 (c. 11), Schedule 16, paragraphs 32 and 39 and Schedule 18, paragraphs 1, 3 and 6.

<sup>(78)</sup> [S.I. 2000/1054](#). Regulation 3 was amended by [S.I. 2009/2930](#).

- (b) in so far as the scheme manager does not pay the benefits in that manner, the scheme manager may apply them in such manner as the scheme manager may determine, for the benefit of the person entitled, or any beneficiaries of the person entitled.

### **Payments due in respect of deceased persons**

**179.**—(1) Paragraph (2) applies if, when a person dies, the total amount due to that person's personal representatives under this scheme (including anything due at that person's death) does not exceed the amount specified in any order for the time being in force under section 6 of the Administration of Estates (Small Payments) Act 1965<sup>(79)</sup> and applying in relation to that person's death.

(2) A scheme manager may pay the whole or part of the amount due to—

- (a) a person's personal representatives; or
- (b) any person or persons appearing to the scheme manager to be beneficially entitled to the estate,

without the production of probate or letters of administration of the person's estate.

### **Limitation on assignment of benefits**

**180.** An assignment of an award under these Regulations is void to the extent that it is in favour of a person other than a dependant of the person entitled to the award.

## **CHAPTER 2**

### **Forfeiture**

#### **Forfeiture: offences committed by members, surviving partners or eligible children**

**181.**—(1) If a member, surviving partner or eligible child is convicted of a relevant offence, the scheme manager may, to such extent and for such duration as it considers appropriate, withhold pensions payable under this scheme to—

- (a) the member;
- (b) any person in respect of the member;
- (c) a surviving partner; or
- (d) an eligible child.

(2) Where a surviving partner's or an eligible child's pension under Part 6 (death benefits) is to be withheld under paragraph (1) as a result of a relevant offence falling under sub-paragraph (a) or (b) of the definition of that expression in paragraph (5), the offence must have been committed after the death on which the person became entitled to the surviving partner's or eligible child's pension, as the case may be.

(3) The scheme manager may only withhold that part of a person's pension that exceeds any guaranteed minimum to which the person is entitled under—

- (a) section 14 of PSA 1993 (earner's guaranteed minimum); or
- (b) section 17 (minimum pensions for widows and widowers)<sup>(80)</sup> of that Act.

(4) The scheme manager may, at any time and to such extent and for such duration as it thinks fit—

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<sup>(79)</sup> 1965 c. 32; there are amendments to section 6 which are not relevant to this instrument.

<sup>(80)</sup> Section 17 was amended by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 39; the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 1 and Schedule 9, Part 3; the Pensions Act 2004 (c. 35), section 284(2); the Pensions Act 2007 (c. 22) section 14(2); the Marriage (Same Sex Couples) Act 2013 (c. 30), Schedule 4, paragraphs 18 and 20; and S.I. 2005/2050 and 2014/560.



- (a) apply for the benefit of any dependant of the member; or
- (b) restore to the member,

so much of any pension as has been withheld under this regulation.

(5) In this regulation—

“forfeiture certificate” (“*tystysgrif fforffedu*”) means a certificate stating that the Welsh Ministers consider that the offence—

- (a) has been gravely injurious to the interests of the State, or
- (b) is liable to lead to serious loss of confidence in the public service;

“relevant offence” (“*trosedd berthnasol*”) means—

- (a) an offence of treason,
- (b) an offence under the Official Secrets Acts 1911 to 1989<sup>(81)</sup> for which the member has been sentenced on the same occasion—
  - (i) to a term of imprisonment of at least 10 years, or
  - (ii) to two or more consecutive terms amounting in the aggregate to at least 10 years, or
- (c) an offence—
  - (i) committed in connection with the member’s scheme employment; and
  - (ii) in respect of which the Welsh Ministers have issued a forfeiture certificate.

#### **Forfeiture of pensions: offences committed by other persons**

**182.**—(1) If a person (“P”) is convicted of the murder of a member, the scheme manager must withhold all of any surviving partner’s or eligible child’s pension otherwise payable to P in respect of the member under Part 6 (death benefits).

(2) If P is convicted of a relevant offence, the scheme manager may, to such extent as it considers appropriate, withhold any surviving partner’s or eligible child’s pension payable to P in respect of a member under Part 6 (death benefits).

(3) If paragraph (1) applies, Part 6 (death benefits) applies as if P had died before the member.

(4) Under paragraph (2) the scheme manager may only withhold such part of P’s pension as exceeds any guaranteed minimum to which P is entitled under section 17 of PSA 1993<sup>(82)</sup>.

(5) If P is convicted of the murder of a member and the conviction is subsequently quashed on appeal, any surviving partner’s or eligible child’s pension withheld is to be payable from the day after that on which the member died, and the scheme manager must, as soon as reasonably practicable after the conviction is quashed, pay the arrears of the pension accrued.

(6) If P is convicted of a relevant offence and the conviction is subsequently quashed on appeal, any decision under paragraph (2) is to be treated as revoked and the scheme manager must, as soon as reasonably practicable after the conviction is quashed, pay the arrears of the pension accrued from the day after that on which the member died.

(7) Nothing in paragraphs (5) or (6) is to affect the application of paragraphs (1) or (2) if the person whose conviction is quashed is subsequently convicted of the murder of the member or of a relevant offence.

(8) In this regulation, “relevant offence” (“*trosedd berthnasol*”) means—

- (a) the manslaughter of the member; or

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<sup>(81)</sup> 1989 c. 6; see section 16(2) for the meaning of “Official Secrets Acts 1911 to 1989”.

<sup>(82)</sup> Pension Schemes Act 1993 (c. 48).

- (b) any other offence, apart from murder, of which the unlawful killing of the member is an element.

### **Forfeiture of lump sum death benefit: offences committed by other persons**

**183.**—(1) If a person is convicted of a relevant offence, the scheme manager must withhold all of any lump sum death benefit payable to that person in respect of a member under Chapter 4 of Part 6 (death benefits).

(2) In this regulation, “relevant offence” (*“trosedd berthnasol”*) means—

- (a) the murder of the member;
- (b) the manslaughter of the member; or
- (c) any other offence of which the unlawful killing of the member is an element.

(3) If paragraph (1) applies and the scheme manager withholds all benefits, Part 6 (death benefits) applies as if that person had died before the member.

(4) If a person is convicted of a relevant offence and the conviction is subsequently quashed on appeal, the scheme manager may, to such extent and for such duration as it thinks fit, restore to that person so much of any benefit as has been withheld under this regulation.

(5) Nothing in paragraph (4) is to affect the application of paragraph (1) if the person whose conviction is quashed is subsequently convicted of a relevant offence.

### **Forfeiture: relevant monetary obligations and relevant monetary losses**

**184.**—(1) If a member (P) has a relevant monetary obligation or has caused a relevant monetary loss the scheme manager may, to such extent and for such duration as it considers appropriate, withhold benefits payable to P under this scheme.

(2) The scheme manager may withhold benefits to the extent the scheme manager considers appropriate but may only withhold that part of P’s pension as exceeds any guaranteed minimum to which P is entitled under section 14 of PSA 1993.

(3) The scheme manager may not withhold more than the lesser of—

- (a) the amount of the relevant monetary obligation or relevant monetary loss; and
- (b) the value of P’s entitlement to benefits.

(4) The scheme manager may only withhold benefits if—

- (a) there is no dispute as to the amount of the relevant monetary obligation or relevant monetary loss; or
- (b) the relevant monetary obligation or relevant monetary loss is enforceable as follows—
  - (i) under an order of a competent court, or
  - (ii) in consequence of an award of an arbitrator.

(5) In this regulation—

“relevant monetary loss” (*“colled ariannol berthnasol”*) means a monetary loss which—

- (a) was caused to this scheme, and
- (b) arose out of P’s criminal, negligent or fraudulent act or omission; and

“relevant monetary obligation” (*“rhwymedigaeth ariannol berthnasol”*) means a monetary obligation which—

- (a) was incurred to P’s employer,
- (b) was incurred after P became an active member of this scheme,

- (c) arose out of P's criminal, negligent or fraudulent act or omission, and
- (d) arose out of or was connected with service in the scheme employment in respect of which P is a member of this scheme.

### Set-off

**185.**—(1) The scheme manager may set off a relevant monetary obligation against a member's entitlement to benefits under this scheme.

(2) In this regulation, a "relevant monetary obligation" (*"rhwymedigaeth ariannol berthnasol"*) is a monetary obligation owed by a member (P), which satisfies the conditions in paragraphs (3), (4) or (5).

(3) The conditions in this paragraph are that the monetary obligation—

- (a) was incurred to P's employer;
- (b) was incurred after P became an active member of this scheme;
- (c) arose out of or was connected with service in the scheme employment in respect of which P is a member of this scheme; and
- (d) arose out of P's criminal, negligent or fraudulent act or omission.

(4) The conditions in this paragraph are that the monetary obligation—

- (a) was incurred to this scheme; and
- (b) arose out of P's criminal, negligent or fraudulent act or omission.

(5) The conditions in this paragraph are that the monetary obligation—

- (a) was incurred to this scheme; and
- (b) arose out of a payment made to P in error by the scheme manager.

(6) Paragraph (7) applies if a set-off is to be applied as result of P owing a relevant monetary obligation which satisfies the conditions in paragraph (3).

(7) Where this paragraph applies, the scheme manager may not apply a set-off against that part of P's entitlement to benefits that represents transfer credits within the meaning of section 124(1) (interpretation of Part 1) of the Pensions Act 1995<sup>(83)</sup> other than prescribed transfer credits for the purposes of section 91(5)(d) (exceptions from the inalienability of occupational pensions) of that Act <sup>(84)</sup>.

(8) The scheme manager may only apply a set-off against that part of a member's pension that exceeds any guaranteed minimum to which that member is entitled under section 14 of PSA 1993.

(9) The value of the set-off applied must not exceed the lesser of—

- (a) the amount of the relevant monetary obligation; and
- (b) the value of P's entitlement to benefits.

(10) The scheme manager may only set off a relevant monetary obligation against P's entitlement to benefits if—

- (a) there is no dispute as to the amount of the relevant monetary obligation; or
- (b) the relevant monetary obligation is enforceable—
  - (i) under an order of a competent court, or

<sup>(83)</sup> Section 124(1) was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 12, paragraphs 43 and 61, the Child Support, Pensions and Social Security Act 2000 (c. 19), Schedule 5, paragraph 8, the Pensions Act 2004 (c. 35), section 7(2), Schedule 12, paragraphs 34, 43 and 69 and Schedule 13, Part 1 and S.I. 2005/2053, 2006/745 and 2014/560.

<sup>(84)</sup> Section 91(5)(d) was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 12, paragraphs 43 and 57. See S.I. 1997/785 which prescribes the transfer credits.

(ii) in consequence of an award of an arbitrator.

### **Forfeiture and set-off: procedure**

**186.**—(1) If the scheme manager proposes to withhold benefits or apply a set-off against a person's entitlement to benefits, the scheme manager must notify the person of the proposal in writing.

(2) If the scheme manager withholds benefits under regulation 184 (forfeiture: relevant monetary obligations and relevant monetary losses) or applies a set-off against an entitlement to benefits under regulation 185 (set-off), the scheme manager must give the member a certificate showing—

- (a) the amount withheld or set off; and
- (b) the effect of the withholding or set-off on the member's, surviving partner's or eligible child's benefits under this scheme.

## **CHAPTER 3**

### **Payment and deduction of tax**

### **Scheme administrator for the purposes of the Finance Act 2004**

**187.** The scheme manager is appointed to be responsible for all liabilities and responsibilities connected with the functions conferred or imposed on the scheme administrator by or under Part 4 of FA 2004 which the scheme manager assumes as sub-scheme administrator under regulation 3 of, and Schedule 3 to, the Registered Pension Schemes (Splitting of Schemes) Regulations 2006<sup>(85)</sup>.

### **Payment on behalf of members of lifetime allowance charge**

**188.**—(1) A member may request the scheme administrator to pay on the member's behalf any amount that is payable by way of the lifetime allowance charge under section 214 of FA 2004 when—

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of FA 2004 occurs in relation to the member; and
- (b) the member and the scheme manager are jointly and severally liable in relation to that event.

(2) Such a request may only be made by notice to the scheme administrator given before the event occurs.

(3) The scheme manager may only comply with such a request if the member—

- (a) pays to it the amount in question on or before the date on which the event occurs; or
- (b) authorises the deduction of the amount in question from a lump sum becoming payable to the member under this scheme at the same time as the event occurs.

### **Reduction of benefits where lifetime allowance charge payable**

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

- (a) an event that is a benefit crystallisation event listed in the table in section 216(1) of FA 2004 ("the table") occurs in relation to a member<sup>(86)</sup>;

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<sup>(85)</sup> S.I. 2006/569; amended by S.I. 2013/1114.

<sup>(86)</sup> Section 216(1) was amended by the Finance Act 2005 (c. 7), Schedule 10, paragraphs 31 and 42; the Finance Act 2006 (c. 25), Schedule 23, paragraph 30; the Finance Act 2008 (c. 9), Schedule 29, paragraphs 1(3) and 5; and the Finance Act 2011 (c. 11), Schedule 16, paragraphs 43 and 73(2).

- (b) the member and the scheme manager are jointly and severally liable in relation to that event; and
  - (c) no request has been duly made under regulation 188 (payment on behalf of members of lifetime allowance charge) in relation to the event or, if such a request has been made, the scheme manager is prevented from complying with it by paragraph (3) of that regulation.
- (2) If this regulation applies—
- (a) the scheme manager must pay the tax payable on the event;
  - (b) if the event is benefit crystallisation event 8 in the table (transfer to qualifying recognised overseas pension scheme), the amount or value of the sums or assets transferred must be reduced; and
  - (c) in the case of any other event in that table, the amount or value of the benefits payable to or in respect of the member must be reduced.
- (3) The amount or value of the reduction—
- (a) must be such that it fully reflects the amount of tax so paid; and
  - (b) in the case of any reduction to pension benefits, must be calculated according to actuarial guidance.

#### **Information about payment of annual allowance charge**

**190.**—(1) If a member's pension scheme input amount for this scheme for a pension input period exceeds the amount of the annual allowance for the tax year in which the pension input period ends, paragraph (2) applies in respect of the member for that tax year.

(2) The scheme manager must, no later than 6 October after the end of the tax year, provide the member with such information as the scheme manager considers appropriate to assist the member to arrange payment of the annual allowance charge for that tax year and with the information required by regulation 14A of the Registered Pension Schemes (Provision of Information) Regulations 2006<sup>(87)</sup>.

(3) In this regulation—

“pension input period” (“*cyfnod mewnbwn pensiwn*”) has the meaning given in section 238 (pension input period) of FA 2004<sup>(88)</sup>;

“pension scheme input amount” (“*swm mewnbwn cynllun pensiwn*”) has the meaning given in section 237B(2) (liability of scheme administrator) of FA 2004<sup>(89)</sup>.

#### **Reduction of benefits where annual allowance charge paid by scheme manager**

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

- (a) a member gives valid notice to the scheme manager of joint and several liability for an annual allowance charge under section 237B(3) of FA 2004; and
- (b) the scheme manager satisfies the liability specified in the notice.

(2) The amount or value of the benefits payable to or in respect of the member for the tax year to which the notice relates must be reduced by the scheme manager in accordance with paragraph (3).

(3) Subject to paragraph (4), the amount or value of the reduction of benefits must be—

- (a) such that it fully reflects the amount paid by the scheme manager; and

<sup>(87)</sup> [S.I. 2006/567](#); regulation 14A was inserted by regulations 2 and 8 of [S.I. 2011/1797](#). It was amended by the Taxation of Pensions Act 2014 (c. 30), section 1 and Schedule 1, paragraph 88.

<sup>(88)</sup> Section 238 was amended by the Finance Act 2011 (c. 11), Schedule 17, paragraph 16.

<sup>(89)</sup> 2004 c. 12; section 237B was inserted by the Finance Act 2011 (c. 11), Schedule 17, paragraph 15 and was amended by the Finance Act 2013 (c. 29), Schedule 46, paragraphs 119 and 129.

(b) determined in accordance with actuarial guidance.

(4) Benefits may only be reduced under this regulation to the extent that the reduction would not result in the loss of any part of a guaranteed minimum pension to which a person is entitled.

## CHAPTER 4

### General

#### Calculation of periods of membership and service

**192.**—(1) Subject to paragraph (3), for the purposes of this scheme, periods of membership and service must be expressed in the first instance in whole years, and days or fractions of a day, and the initial aggregation of periods that require to be aggregated is done by reference to periods so expressed.

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

(3) If membership or service is referred to in these Regulations as membership or service in years—

(a) the days referred to in paragraph (1), and

(b) the full days referred to in paragraph (2),

must be converted into years by dividing the number of days in excess of the period of whole years by 365, and using the result to four decimal places.

(4) If a period of membership or service is less than one year, this regulation applies as if the words “whole years, and” were omitted from paragraph (1) and the words “in excess of the period of whole years” were omitted from paragraph (3).

#### Annual benefit information statements

**193.**—(1) The scheme manager must provide an annual benefit information statement to each of its members who are not pensioner members in respect of the pension account for which the statement is to be provided.

(2) The first such statements must be provided on or before 31 August 2016.

(3) Subject to paragraph (4), subsequent statements must be provided at least once per year on or before 31 August of each year that follows.

(4) If a member requests in writing that a statement is provided to them after the end of a scheme year but before 31 August of the following scheme year, the scheme manager must provide an annual benefit information statement as soon as reasonably practicable in accordance with the member's request, unless the relevant data to enable it to do so is not available.

(5) The statement provided to active members of this scheme must be in accordance with section 14 of the 2013 Act (information about benefits).

#### Evidence of entitlement

**194.**—(1) A scheme manager may by written notice require any person who is in receipt of a pension or may have an entitlement to a pension or a lump sum under this scheme to provide it with such supporting evidence as it may reasonably require to establish—

(a) the identity of that person; and

(b) that person's continuing or future entitlement to the payment of any amount under this scheme.

(2) A notice under paragraph (1) must specify the date by which the supporting evidence is to be provided.

(3) Where a person fails to comply with the requirements of a notice given in accordance with paragraph (1), the scheme manager may withhold the whole or part of any amount that it otherwise considers to be payable under this scheme.

#### **Information to be provided to a member before reserve forces service leave**

**195.** The scheme manager must give a member who is about to start on a period of reserve forces service leave a statement stating—

- (a) the assumed pensionable pay for that member whilst on reserve forces service leave;
- (b) the member contribution rate to apply during that period;
- (c) details of any payments to be paid by the employer to the member whilst on reserve forces service leave; and
- (d) the employer contribution which applies during that period.

#### **Transitional provisions**

**196.** Schedule 2 has effect.

#### **Duty to have regard to guidance**

**197.** A scheme manager must have regard to any guidance issued by the Welsh Ministers for the purposes of this Part.

9 March 2015

*Leighton Andrews*  
Minister for Public Services, one of the Welsh  
Ministers

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## SCHEDULES

### SCHEDULE 1

Regulation 124

#### Payments for added pension

### PART 1

#### Interpretation

##### Interpretation

**1.** In this Schedule—

“amount of extra pension” (“*swm o bensiwn ychwanegol*”) means the amount of accrued added pension at any time;

“appropriate pay period” (“*cyfnod tâl priodol*”) means the pay period that the scheme manager considers appropriate;

“notice of election” (“*hysbysiad o ddewisiad*”) has the meaning given in paragraph 5;

“overall limit of extra pension” (“*terfyn cyffredinol o bensiwn ychwanegol*”) has the meaning given in paragraph 2;

“period of service” (“*cyfnod o wasanaeth*”) in relation to this scheme, means a continuous period of pensionable service under this scheme;

“periodical payment period” (“*cyfnod taliadau cyfnodol*”) means the period for which periodical payments for added pension payments are payable;

“the relevant day” (“*y diwrnod perthnasol*”) means the day on which the lump sum is received by the scheme manager;

“the relevant scheme year” (“*y flwyddyn gynllun berthnasol*”) means the scheme year in which the relevant day falls.

##### Meaning of “overall limit of extra pension”

**2.—**(1) The overall limit of extra pension is—

(a) £6,500 for any scheme year ending before 1 April 2016; and

(b) for any scheme year beginning on or after 1 April 2016—

(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 sub-paragraph (2).

(2) 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 PIA 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.



### **Limit on elections**

3. An added pension election may not be exercised by an active member if the amount of extra pension would exceed the overall limit of extra pension if that election were made.

### **Amount of accrued added pension may not exceed overall limit of extra pension**

4.—(1) At any given time, the total amount of accrued added pension in a member's added pension account may not exceed the overall limit of extra pension.

(2) If a member has elected to make periodical payments for added pension, the scheme manager may by written notice to the member cancel the election if it appears to the scheme manager that the overall limit of extra pension will be exceeded if the member continues to make the periodical payments.

(3) If the scheme manager cancels the election, the periodical payments cease to be payable from the next pay period beginning after the date specified in the notice of cancellation.

## **PART 2**

### **CHAPTER 1**

#### **Exercising the added pension election**

### **Added pension election exercisable by member**

5.—(1) An active member of this scheme may elect to make added pension payments to this scheme to increase the member's retirement benefits and death benefits.

(2) A member may make the added pension election by notice to the scheme manager in such form as the scheme manager may require.

(3) The notice given in sub-paragraph (2) is referred to in this Schedule as the notice of election.

(4) The notice of election must state—

(a) whether added pension payments are to be made by—

(i) periodical payments, or

(ii) a lump sum payment;

(b) whether the member has an added pension account with another employer; and

(c) whether the member is making an added pension election in connection with another scheme employment.

(5) An election to pay added pension payments by a lump sum payment may only be made if the member gives notice to the scheme manager not later than 12 months after the date on which the person last became employed by that scheme employer as a firefighter.

(6) An election to pay added pension payments by periodical payments may only be made at least two years before the member's normal pension age and cannot be made once the scheme manager has agreed that the member will leave the scheme employment with entitlement to a pension or an ill-health award.

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## CHAPTER 2

### Periodical payments for added pension

#### Application of Chapter

6. This Chapter applies in relation to an active member of this scheme who elects to make periodical payments for added pension.

#### Member's election to make periodical payments for added pension

7.—(1) The notice of election must specify—

- (a) the periodical payment period; and
- (b) the amount of the periodical payment to be deducted by the member's employer from the member's pensionable pay in each pay period.

(2) The amount of the periodical payment may be expressed as—

- (a) a percentage of the member's pensionable pay; or
- (b) a fixed sum.

(3) The amount of the periodical payment must not be less than any minimum amount determined by the scheme manager.

#### Periodical payments

8.—(1) The periodical payments may be payable by deduction by the member's employer from the member's pensionable pay during the periodical payment period.

(2) The periodical payment period—

- (a) begins with the first appropriate pay period beginning on or after the date on which the scheme manager receives the notice of election; and
- (b) ends on the earliest of the date—
  - (i) of the beginning of the next appropriate pay period if the member gives the notice of discontinuance under paragraph 9,
  - (ii) of the beginning of the next pay period after the date specified in a notice of cancellation given by the scheme manager under paragraph 4(2),
  - (iii) on which the member ceases to be an active member, and
  - (iv) specified in the notice of election.

(3) If the member does not want to pay the periodical payments by deduction from pensionable pay, the scheme manager may agree another method of payment.

#### Discontinuance of periodical payments

9. If a member wishes to discontinue the payment of periodical payments, the member must give written notice to the scheme manager.

#### Periodical payments during periods of assumed pensionable pay

10.—(1) The periodical payments are payable by deduction from the member's pensionable pay during the periodical payments period and whilst the member is treated as receiving assumed pensionable pay, reduced pay or no pay, the member may—

- (a) stop the periodical payments; or

- (b) continue the periodical payments as if the member were receiving pensionable pay at the full rate.
- (2) During any period in which the member is receiving statutory maternity pay or is on paid ordinary maternity leave, paid ordinary adoption leave or paid paternity leave, the member may—
  - (a) stop the periodical payments; or
  - (b) pay the periodical payments of an amount determined by reference to the member's actual pay during that period.
- (3) If a member stops the periodical payments during a period of assumed pensionable pay or a period of reduced pay, the member may choose to resume the periodical payments in the next pay period after the period of assumed pensionable pay or period of reduced pay ends.
- (4) After a period of assumed pensionable pay or a period of reduced pay, the member may give written notice to the scheme manager authorising the employer to deduct the aggregate of payments which would have been made during this period from the member's pay during a period of six months from the end of the period of reduced pay or such longer period as the scheme manager may allow.
- (5) Notice under sub-paragraph (4) must be given to the scheme manager not later than one month after the end of the period of assumed pensionable pay or reduced pay.

#### **Amount of added pension for a scheme year**

- 11.—(1) This paragraph applies for each scheme year during which a member makes periodical payments to increase both the member's retirement benefits and death benefits.
- (2) An amount of added pension must be credited to the member's added pension account for that scheme year.
- (3) The amount credited to the added pension account is an amount determined by the scheme manager by reference to actuarial guidance.

### **CHAPTER 3**

#### **Lump sum payments for added pension**

##### **Application of Chapter**

- 12. This Chapter applies in relation to an active member of this scheme who has elected to make a lump sum payment for added pension.

##### **Member's election to make a lump sum payment for added pension**

- 13.—(1) The notice of election must specify the amount of lump sum which must not be less than any minimum amount determined by the scheme manager.
- (2) If the lump sum is not paid within three months after the date on which the notice of election was given, then the notice of election is void.

##### **Amount of added pension to be credited to added pension account**

- 14.—(1) This paragraph applies if a member elects to pay a lump sum to increase the member's retirement benefits and death benefits.
- (2) Following payment of the lump sum by the member, an amount of added pension must be credited to the added pension account for the relevant scheme year.
- (3) The amount credited to the added pension account is an amount determined by the scheme manager by reference to actuarial guidance.

## SCHEDULE 2

Regulation 196

### Transitional provisions

## PART 1

### General

#### Interpretation

##### 1. In this Schedule—

“active member of an existing public body pension scheme” (*“aelod actif o gynllun pensiwn corff cyhoeddus presennol”*) has the meaning given in paragraph 7;

“active member of an existing scheme” (*“aelod actif o gynllun presennol”*) has the meaning given in paragraph 6;

“active member of the 1992 Scheme or the NFPS” (*“aelod actif o Gynllun 1992 neu o CPNDT”*) has the meaning given in paragraph 5;

“closing date” (*“dyddiad cau”*)—

- (a) in relation to an existing scheme, means the date referred to in section 18(4)(a) or (b) of the 2013 Act, as the case may be,
- (b) in relation to an existing public body pension scheme, means the date determined under section 31(2) of the 2013 Act by the public authority responsible for that scheme, and
- (c) in relation to a transition member, means—
  - (i) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the tapered protection closing date for that member, or
  - (ii) if the member is not a protected member of one of those schemes, the scheme closing date;

“eligible to be an active member of the NFPS” (*“cymwys i fod yn aelod actif o CPNDT”*) has the meaning given in paragraph 4;

“exception” (*“eithriad”*) means—

- (a) in relation to an existing scheme, an exception under section 18(5) of the 2013 Act provided for in the scheme regulations for that scheme,
- (b) in relation to an existing public body pension scheme, an exception under section 31(4) of the 2013 Act provided for by the public authority responsible for that scheme;

“existing public body pension scheme” (*“cynllun pensiwn corff cyhoeddus presennol”*) means a public body pension scheme to which section 31 of the 2013 Act applies;

“full protection member” (*“aelod diogelwch llawn”*), in relation to the 1992 Scheme or the NFPS, has the meaning given in paragraph 9;

“fully protected member” (*“aelod a ddiogelir yn llawn”*) of an existing scheme or an existing public body pension scheme means a person in respect of whom an exception applies, which exception is one to which section 18(6) of the 2013 Act<sup>(90)</sup> (or that section as applied by section 31(4) of that Act) applies for the purposes of that scheme;

<sup>(90)</sup> Section 18(6) was amended by the Pensions Act 2014 (c. 19), section 52(3).

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“protected member” (“*aelod a ddiogelir*”), in relation to an existing scheme or an existing public body pension scheme, means a full protection member or tapered protection member of one of those schemes;

“protection period” (“*cyfnod diogelwch*”)—

- (a) for a full protection member of the 1992 Scheme or the NFPS, has the meaning given in paragraph 10, and
- (b) for a tapered protection member of the 1992 Scheme or the NFPS, has the meaning given in paragraph 16;

“scheme closing date” (“*dyddiad cau’r cynllun*”) means 31 March 2015;

“tapered protection closing date” (“*dyddiad cau diogelwch taprog*”), in relation to a tapered protection member of an existing scheme, has the meaning given in paragraph 3;

“tapered protection member” (“*aelod diogelwch taprog*”), in relation to the 1992 Scheme or the NFPS, has the meaning given in paragraph 15;

“transition date” (“*dyddiad trosiant*”), in relation to a transition member, means—

- (a) if the member is a tapered protection member of the 1992 Scheme or the NFPS, the day after the tapered protection closing date for that member, and
- (b) if the member is not a protected member of the 1992 Scheme or the NFPS, the day after the scheme closing date, or, if later, the day the person ceased to be a protected member of that scheme;

“transition member” (“*aelod trosiannol*”) means a person—

- (a) who is a member of the 1992 Scheme or the NFPS by virtue of their pensionable service under that scheme, or who is eligible to be an active member of the NFPS, before the transition date, and
- (b) who is a member of this scheme by virtue of the person’s pensionable service under this scheme.

### Meaning of “continuity of service”

2.—(1) A transition member (T) has continuity of service between pensionable service in the 1992 Scheme or the NFPS, as the case may be, and pensionable service in this scheme unless T has a gap in service exceeding five years which—

- (a) begins on or before T’s transition date; and
- (b) ends on the day on which T becomes an active member of this scheme.

(2) For the purposes of sub-paragraph (1), after the scheme closing date T is not on a gap in service while T is in service which is pensionable under an existing scheme, an existing public body pension scheme, a scheme under section 1 of the 2013 Act or a new public body pension scheme.

### Meaning of “tapered protection closing date”

3.—(1) The tapered protection closing date for a tapered protection member of the 1992 Scheme is the date found by applying the relevant date in column 3 of the 1992 Scheme table in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

(2) Subject to sub-paragraph (3), the tapered protection closing date for a tapered protection member of the NFPS is the date found by applying the relevant date in column 3 of the NFPS table in Part 4 of this Schedule to the birthday referred to in column 1 and column 2.

(3) The tapered protection closing date for a tapered protection member of the NFPS to whom paragraph 9(5) or 21 applies is a date determined by the scheme manager.

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### **Meaning of “eligible to be an active member” of the NFPS**

4.—(1) For the purpose of this Schedule, a person (P) is eligible to be an active member of the NFPS on a given date if on that date P is not in pensionable service under the 1992 Scheme or the NFPS and either—

- (a) P is in service as a firefighter which entitles P to be eligible to be an active member of the NFPS; or
- (b) P is on a gap in pensionable service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

### **Meaning of “active member of the 1992 Scheme or the NFPS”**

5.—(1) For the purpose of this Schedule, a person (P) is an active member of the 1992 Scheme or the NFPS on a given date if on that date P is—

- (a) in pensionable service under the 1992 Scheme or the NFPS; or
- (b) on a gap in service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

### **Meaning of “active member of an existing scheme”**

6.—(1) For the purpose of this Schedule, a person (P) is an active member of an existing scheme<sup>(91)</sup> (other than the 1992 Scheme or the NFPS) on a given date if on that date P is—

- (a) in pensionable service under that scheme; or
- (b) on a gap in service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the closing date for the existing scheme P is not on a gap in service while P is in pensionable public service.

### **Meaning of “active member of an existing public body pension scheme”**

7.—(1) For the purpose of this Schedule, a person (P) is an active member of an existing public body pension scheme on a given date if on that date P is—

- (a) in pensionable service under that scheme; or
- (b) on a gap in service not exceeding five years.

(2) For the purpose of sub-paragraph (1)(b), after the closing date for the existing public body pension scheme P is not on a gap in service while P is in pensionable public service.

### **Commencement of active membership of this scheme**

8.—(1) A person who is a transition member on entering pensionable service under this scheme and who does not have continuity of service becomes an active member of this scheme on the day the person begins pensionable service in a scheme employment.

(2) A person who is a transition member on entering pensionable service under this scheme and who has continuity of service (T) becomes an active member of this scheme—

- (a) if T is in pensionable service in a scheme employment on the transition date, on that date; or

<sup>(91)</sup> See section 18(2) of the 2013 Act for the meaning of “existing scheme”.

- (b) if T is not in pensionable service in a scheme employment on the transition date, on the day T enters pensionable service in a scheme employment after that date.

## PART 2

### Full protection members of the 1992 Scheme or the NFPS

#### Full protection members of the 1992 Scheme or the NFPS

**9.—**(1) A person (P) to whom any of paragraphs 12 to 14 applies is a full protection member of the 1992 Scheme or the NFPS, as the case may be.

(2) P ceases to be a full protection member of the 1992 Scheme or the NFPS, as the case may be, when P ceases to be in pensionable service under that scheme and ceases to be eligible to be an active member of the NFPS, unless sub-paragraph (3) or (4) applies.

(3) This sub-paragraph applies if P—

- (a) returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme (other than the 1992 Scheme) or an existing public body pension scheme; and
- (b) would have been a fully protected member of that existing scheme or existing public body pension scheme had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(4) This sub-paragraph applies if P returns to service which is pensionable under the NFPS—

- (a) otherwise than from service which is pensionable under an existing scheme or an existing public body pension scheme; and
- (b) after a gap in service not exceeding five years.

(5) If P returns to service which is pensionable under the NFPS in circumstances where sub-paragraph (6) applies, P is a tapered protection member of the NFPS when P returns to that service.

(6) This sub-paragraph applies if P—

- (a) returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme or an existing public body pension scheme; and
- (b) would have been a protected member of the existing scheme or existing public body pension scheme by virtue of an exception to which section 18(7)(a) and (b) of the 2013 Act (or that section as applied by section 31(4) of that Act) applies had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(7) For the purpose of sub-paragraph (4)(b), after the scheme closing date P is not on a gap in service while P is in pensionable public service.

#### Exception for full protection member during protection period

**10.—**(1) The protection period for a person (P) who is a full protection member of the 1992 Scheme or the NFPS, as the case may be, is the period which—

- (a) begins on the day after the scheme closing date; and
- (b) ends when P ceases to be a full protection member of the 1992 Scheme or the NFPS (unless P is a tapered protection member by virtue of paragraph 9(5)).

(2) During the protection period—

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- (a) P is eligible to be in pensionable service under the NFPS or, where P is an active member of the 1992 Scheme, eligible to be in pensionable service under that scheme;
- (b) section 18(1) of the 2013 Act does not apply in respect of that pensionable service; and
- (c) benefits are to be provided under the 1992 Scheme or the NFPS, as the case may be, to or in respect of P in relation to that pensionable service.

#### **Full protection member not eligible to join this scheme**

**11.** While a person (P) is a full protection member of the 1992 Scheme or the NFPS, P is not eligible to be an active member of this scheme in respect of that scheme employment.

#### **Full protection: members of the 1992 Scheme or the NFPS on scheme closing date**

**12.—**(1) This paragraph applies if sub-paragraph (2) or sub-paragraph (3) applies.

(2) This sub-paragraph applies if—

- (a) P was an active member of the 1992 Scheme or an active member, or eligible to be an active member, of the NFPS on the scheme closing date;
- (b) P was an active member of the 1992 Scheme or an active member, or eligible to be an active member, of the NFPS on 31 March 2012; and
- (c) if P—
  - (i) is an active member of the 1992 Scheme, P would, unless P dies, reach normal pension age under the 1992 Scheme<sup>(92)</sup> on or before 1 April 2022; or
  - (ii) is an active member, or eligible to be an active member, of the NFPS, P would, unless P dies, reach normal pension age under the NFPS<sup>(93)</sup> on or before 1 April 2022.

(3) This sub-paragraph applies if P—

- (a) was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme (“P’s transitional scheme”) on 31 March 2012;
- (b) was an active member or eligible to be an active member of the NFPS on the scheme closing date; and
- (c) would, unless P dies, reach normal pension age under the NFPS and P’s transitional scheme on or before 1 April 2022.

#### **Full protection: members of an existing scheme**

**13.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension scheme (“P’s transitional scheme”) on 31 March 2012;
- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing scheme other than the 1992 Scheme or the NFPS;

(92) [S.I. 1992/129](#): rule A13 provides that normal pension age is 55 and rule B1 enables regular firefighters over the age of 50 to retire once they have reckoned pensionable service of at least 25 years. Rule A13 as it has effect in Wales was substituted by [S.I. 2006/1672](#). Rule B1 as it has effect in Wales has been amended by [S.I. 2005/566](#) and [2014/3242](#).

(93) [S.I. 2007/1072 \(W. 110\)](#): rule 3(1) of Part 2 provides that normal retirement age of firefighter members is 60.



- (d) on the date that P begins service which is pensionable under the NFPS, P would have been a fully protected member of the existing scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
- (e) P would, unless P dies, reach normal pension age under the NFPS and P's transitional scheme on or before 1 April 2022.

**Full protection: members of an existing public body pension scheme**

**14.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension scheme (“transitional scheme”) on 31 March 2012;
- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing public body pension scheme;
- (d) on the date that P begins service which is pensionable under the NFPS, P would have been a fully protected member of the existing public body pension scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
- (e) P would, unless P dies, reach normal pension age under the NFPS and P's transitional scheme on or before 1 April 2022.

## PART 3

### Exceptions to section 18(1) of the 2013 Act: tapered protection members of the 1992 Scheme or the NFPS

**Tapered protection members of the 1992 Scheme or the NFPS**

**15.—**(1) A person (P) to whom any of paragraphs 18 to 21 applies is a tapered protection member of the 1992 Scheme or the NFPS.

(2) P ceases to be a tapered protection member of the 1992 Scheme or the NFPS on whichever of the following days occurs first—

- (a) P's tapered protection closing date; or
- (b) the day on which P ceases to be in pensionable service under the 1992 Scheme or if later, ceases to be eligible to be in pensionable service under the NFPS, unless sub-paragraph (3) or sub-paragraph (4) applies.

(3) This sub-paragraph applies if—

- (a) before P's transition date P returns to service which is pensionable under the NFPS from service which is pensionable under an existing scheme or an existing public body pension scheme; and
- (b) P would have been a protected member of that existing scheme or existing public body pension scheme had P re-entered service which is pensionable under that scheme on the date P returns to service which is pensionable under the NFPS.

(4) This sub-paragraph applies if—

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- (a) before P's transition date P returns to service which is pensionable under the NFPS otherwise than from service which is pensionable under an existing scheme or an existing public body pension scheme; and
  - (b) P returns to service which is pensionable under the NFPS after a gap in service not exceeding five years.
- (5) For the purpose of paragraph (4)(b), after the scheme closing date, P is not on a gap in service while P is in pensionable public service.

#### **Exception for tapered protection members during protection period**

**16.—**(1) The protection period for a tapered protection member of the 1992 Scheme or the NFPS is the period which—

- (a) begins on the day after the scheme closing date; and
  - (b) ends when P ceases to be a tapered protection member of the 1992 Scheme or the NFPS.
- (2) During the protection period—
- (a) P is eligible to be in pensionable service under the NFPS or, where P is an active member of the 1992 Scheme, eligible to be in pensionable service under that scheme;
  - (b) section 18(1) of the 2013 Act does not apply in respect of that pensionable service; and
  - (c) benefits are to be provided under the 1992 Scheme or the NFPS, as the case may be, to or in respect of P in relation to that pensionable service.

#### **Tapered protection member not eligible to join this scheme**

**17.** While a person (P) is a tapered protection member of the 1992 Scheme or the NFPS, P is not eligible to be an active member of this scheme in respect of that scheme employment.

#### **Tapered protection: members of the 1992 Scheme or the NFPS on scheme closing date**

**18.—**(1) This paragraph applies if sub-paragraph (2) or sub-paragraph (3) applies.

(2) This sub-paragraph applies if—

- (a) P was an active member of the 1992 Scheme or was an active member, or eligible to be an active member, of the NFPS on the scheme closing date;
- (b) on 31 March 2012 P was an active member of the 1992 Scheme or was an active member, or eligible to be an active member, of the NFPS; and
- (c) if P—
  - (i) is an active member of the 1992 Scheme P would, unless P dies, reach normal pension age under the 1992 Scheme during the period beginning with 2 April 2022 and ending with 31 March 2026; or
  - (ii) is an active member, or eligible to be an active member, of the NFPS, P would, unless P dies, reach normal pension age under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026.

(3) This sub-paragraph applies if P—

- (a) was an active member of an existing scheme (other than the 1992 Scheme or the NFPS), or of an existing public body pension scheme ("P's transitional scheme") on 31 March 2012;
- (b) was an active member of the NFPS on the scheme closing date; and
- (c) would, unless P dies, reach normal pension age—

- (i) under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026, and
- (ii) under P's transitional scheme on or before 1 September 2025.

**Tapered protection: members of an existing scheme**

**19.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension scheme ("P's transitional scheme") on 31 March 2012;
- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing scheme other than the 1992 Scheme or the NFPS;
- (d) on the date that P begins service which is pensionable under the NFPS, P would have been a protected member of the existing scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
- (e) P would, unless P dies, reach normal pension age—
  - (i) under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026, and
  - (ii) under P's transitional scheme on or before 1 September 2025.

**Tapered protection: members of an existing public body pension scheme**

**20.** This paragraph applies if—

- (a) P was an active member of an existing scheme (other than the 1992 Scheme or the NFPS) or an existing public body pension scheme on the closing date for that scheme;
- (b) P was an active member of an existing scheme or an existing public body pension scheme ("P's transitional scheme") on 31 March 2012;
- (c) P begins service which is pensionable under the NFPS not more than five years after leaving pensionable service under an existing public body pension scheme;
- (d) on the date that P begins service which is pensionable under the NFPS, P would have been a protected member of the existing public body pension scheme referred to in sub-paragraph (c) had P re-entered service which is pensionable under that scheme on that date; and
- (e) P would, unless P dies, reach normal pension age—
  - (i) under the NFPS during the period beginning with 2 April 2022 and ending with 31 March 2026, and
  - (ii) under P's transitional scheme on or before 1 September 2025.

**Tapered protection members of an existing scheme or an existing public body pension scheme**

**21.** This paragraph applies if—

- (a) paragraph 13 or 14 of this Schedule would have applied but for the fact that P would not have been a fully protected member of the existing scheme or existing public body pension scheme referred to in paragraph 13(c) or 14(c), as the case may be, ("transferring scheme") on the date P begins service which is pensionable under the NFPS; and

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- (b) P would have been a protected member of the transferring scheme by virtue of an exception to which section 18(7)(a) and (b) of the 2013 Act (or that section as applied by section 31(4) of that Act) applies had P re-entered service which is pensionable under the transferring scheme on the date P returns to service which is pensionable under the NFPS.

## PART 4

### 1992 Scheme

<i>Date of birth from</i>	<i>Date of birth to</i>	<i>Date of end of protection</i>
02/04/1967	01/05/1967	31/03/2022
02/05/1967	01/06/1967	06/02/2022
02/06/1967	01/07/1967	14/12/2021
02/07/1967	01/08/1967	23/10/2021
02/08/1967	01/09/1967	29/08/2021
02/09/1967	01/10/1967	06/07/2021
02/10/1967	01/11/1967	15/05/2021
02/11/1967	01/12/1967	21/03/2021
02/12/1967	01/01/1968	28/01/2021
02/01/1968	01/02/1968	05/12/2020
02/02/1968	01/03/1968	11/10/2020
02/03/1968	01/04/1968	22/08/2020
02/04/1968	01/05/1968	28/06/2020
02/05/1968	01/06/1968	07/05/2020
02/06/1968	01/07/1968	14/03/2020
02/07/1968	01/08/1968	21/01/2020
02/08/1968	01/09/1968	28/11/2019
02/09/1968	01/10/1968	05/10/2019
02/10/1968	01/11/1968	13/08/2019
02/11/1968	01/12/1968	20/06/2019
02/12/1968	01/01/1969	28/04/2019
02/01/1969	01/02/1969	05/03/2019
02/02/1969	01/03/1969	10/01/2019
02/03/1969	01/04/1969	22/11/2018
02/04/1969	01/05/1969	29/09/2018
02/05/1969	01/06/1969	07/08/2018
02/06/1969	01/07/1969	14/06/2018
02/07/1969	01/08/1969	22/04/2018

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<i>Date of birth from</i>	<i>Date of birth to</i>	<i>Date of end of protection</i>
02/08/1969	01/09/1969	27/02/2018
02/09/1969	01/10/1969	04/01/2018
02/10/1969	01/11/1969	12/11/2017
02/11/1969	01/12/1969	19/09/2017
02/12/1969	01/01/1970	29/07/2017
02/01/1970	01/02/1970	04/06/2017
02/02/1970	01/03/1970	11/04/2017
02/03/1970	01/04/1970	21/02/2017
02/04/1970	01/05/1970	29/12/2016
02/05/1970	01/06/1970	06/11/2016
02/06/1970	01/07/1970	13/09/2016
02/07/1970	01/08/1970	23/07/2016
02/08/1970	01/09/1970	29/05/2016
02/09/1970	01/10/1970	05/04/2016
02/10/1970	01/11/1970	13/02/2016
02/11/1970	01/12/1970	20/12/2015
02/12/1970	01/01/1971	29/10/2015
02/01/1971	01/02/1971	05/09/2015
02/02/1971	01/03/1971	12/07/2015
02/03/1971	01/04/1971	24/05/2015

#### NFPS

<i>Date of birth from</i>	<i>Date of birth to</i>	<i>Date of end of protection</i>
02/04/1962	01/05/1962	31/03/2022
02/05/1962	01/06/1962	06/02/2022
02/06/1962	01/07/1962	14/12/2021
02/07/1962	01/08/1962	23/10/2021
02/08/1962	01/09/1962	29/08/2021
02/09/1962	01/10/1962	06/07/2021
02/10/1962	01/11/1962	15/05/2021
02/11/1962	01/12/1962	21/03/2021
02/12/1962	01/01/1963	28/01/2021
02/01/1963	01/02/1963	05/12/2020
02/02/1963	01/03/1963	11/10/2020
02/03/1963	01/04/1963	23/08/2020

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<i>Date of birth from</i>	<i>Date of birth to</i>	<i>Date of end of protection</i>
02/04/1963	01/05/1963	30/06/2020
02/05/1963	01/06/1963	09/05/2020
02/06/1963	01/07/1963	15/03/2020
02/07/1963	01/08/1963	23/01/2020
02/08/1963	01/09/1963	30/11/2019
02/09/1963	01/10/1963	06/10/2019
02/10/1963	01/11/1963	15/08/2019
02/11/1963	01/12/1963	22/06/2019
02/12/1963	01/01/1964	30/04/2019
02/01/1964	01/02/1964	07/03/2019
02/02/1964	01/03/1964	12/01/2019
02/03/1964	01/04/1964	22/11/2018
02/04/1964	01/05/1964	29/09/2018
02/05/1964	01/06/1964	07/08/2018
02/06/1964	01/07/1964	14/06/2018
02/07/1964	01/08/1964	22/04/2018
02/08/1964	01/09/1964	27/02/2018
02/09/1964	01/10/1964	04/01/2018
02/10/1964	01/11/1964	12/11/2017
02/11/1964	01/12/1964	19/09/2017
02/12/1964	01/01/1965	29/07/2017
02/01/1965	01/02/1965	04/06/2017
02/02/1965	01/03/1965	11/04/2017
02/03/1965	01/04/1965	21/02/2017
02/04/1965	01/05/1965	29/12/2016
02/05/1965	01/06/1965	06/11/2016
02/06/1965	01/07/1965	13/09/2016
02/07/1965	01/08/1965	23/07/2016
02/08/1965	01/09/1965	29/05/2016
02/09/1965	01/10/1965	05/04/2016
02/10/1965	01/11/1965	13/02/2016
02/11/1965	01/12/1965	20/12/2015
02/12/1965	01/01/1966	29/10/2015
02/01/1966	01/02/1966	05/09/2015

<i>Date of birth from</i>	<i>Date of birth to</i>	<i>Date of end of protection</i>
02/02/1966	01/03/1966	12/07/2015
02/03/1966	01/04/1966	24/05/2015

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Part 1 of these Regulations establishes a scheme for the payment of pensions and other benefits to firefighters in Wales from 1 April 2015. The scheme so established is a career average revalued earnings scheme.

Part 2 contains provisions appointing fire and rescue authorities as “scheme managers” and permitting the delegation of the Welsh Ministers’ and the scheme managers’ functions under these Regulations. Part 2 also contains provisions in relation to the establishment, membership and operation of Local Pensions Boards and the Firefighters’ Scheme Advisory Board for Wales.

Part 3 provides for scheme membership. It sets out the key concepts of scheme employment and pensionable earnings. It contains eligibility and auto-enrolment provisions.

Part 4 provides for the establishment of a member’s pension accounts in relation to a continuous period of pensionable service under this scheme. It also provides for the establishment of a pension credit member’s account.

Part 5 provides for a member’s entitlement to payment of retirement benefits including partial retirement benefits and ill-health benefits. It also provides for the assignment of benefits. It sets out the key concept of qualifying service.

Part 6 provides for death benefits payable to surviving adults and eligible children and for payment of lump sum benefits.

Part 7 provides for benefits for pension credit members.

Part 8 provides for the payment of contributions by members and employers.

Part 9 provides for payments to be made into and out of the Firefighters’ Pension Fund.

Part 10 provides for making and receiving transfer payments.

Part 11 provides for actuarial valuations and provides for an employer cost cap which is a percentage of the pensionable earnings of the members of the scheme.

Part 12 provides for the determinations of questions and appeals.

Part 13 contains supplementary provisions on payment of pensions, forfeiture and set off, payment and deduction of tax.

Schedule 1 makes provision for payments for added pension.

Schedule 2 makes transitional provision.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Fire and Armed Forces Branch, Welsh Government, Rhydycar, Merthyr Tydfil, CF48 1UZ or 0300 062 8221.

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