
STATUTORY RULES OF NORTHERN IRELAND

2010 No. 22

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

PART 3

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

Insertion of Chapter 10

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

“CHAPTER 10

2008 Section Optants

Application of Chapter 10 of this Part

136A

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

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

This Chapter does not apply to persons if—

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

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

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

136B

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

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

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

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

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

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

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

(4) For the purpose of paragraph (3)—

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

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

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

This is subject to paragraph (12).

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

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

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

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

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

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

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

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

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

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

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

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

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

Transfer of service from the 1995 Section

Service credited from the 1995 Section

136C

(1) A 2008 Section Optant who—

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

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

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

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

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

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

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

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

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

- (a) shall not include any superannuable service the Optant was entitled to count under regulation 4(1)(e) of those Regulations;
- (b) shall be calculated without regard to paragraph (5) of regulation 76 of those Regulations (Mental Health Officers); and
- (c) where the Optant is entitled to count any part-time superannuable service in the 1995 Section, shall be calculated in accordance with regulation 78 of those Regulations (Part-time employment).

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

Treatment of Additional Pension

136D

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

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

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation 73G of the 1995 Regulations (Effect of payment of additional contributions under this Part);

(b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation 73F of those Regulations (Cancellation and cessation of options under regulation 73A).

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

(a) purchased in the 1995 Section under regulation 73G of the 1995 Regulations where the person's chosen birthday under the OPAP was 65;

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

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

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

(a) that was purchased in the 1995 Section under regulation 73H of the 1995 Regulations, where the person's chosen birthday under the OPAP was 65;

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

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

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

(6) This paragraph applies—

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

(b) where at the effective date specified in paragraph (5) of regulation 136B—

(i) that person—

(aa) was making additional contributions in accordance with an OPAP exercised under regulation 73A of the 1995 Regulations; or

(bb) had applied to make, but had not yet begun making, additional contributions under regulation 73A of the 1995 Regulations; or

(cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation 73C of the 1995 Regulations, or

(ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation 73D of the 1995 Regulations.

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

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

(a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 34, 36 or 37 would apply in that case; and

- (b) after adjustment, having regard to the advice of the Scheme actuary, so that—
 - (i) the amount of the additional pension purchased in this Section of the Scheme is the same as that which would have been purchased in the 1995 Section, but
 - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the Scheme, reduce or (where appropriate) cease to be payable.

This is subject to paragraph (9).

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

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

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

Treatment of Additional Service

136E

- (1) A 2008 Section Optant—
 - (a) who becomes a member of this Section of the Scheme; and
 - (b) is buying or has already bought a period of additional service that counts as superannuable service under regulation 4(1)(e) of the 1995 Regulations (Meaning of superannuable service),

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

- (2) That additional service referred to in paragraph (1) is—
 - (a) any additional service bought under regulation 67 of the 1995 Regulations (Right to buy additional service) before the date that person's option to join this Section of the Scheme was received by the Department in accordance with regulation 136B; and
 - (b) any additional service bought under regulations 22 or 23 of the Health Personal Social Services (Superannuation) Regulations (Northern Ireland) 1984(1).

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

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

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

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

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

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

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

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

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

- (a) first taking a period equal in length to the period of additional service (specified in days) calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies (“Period AS”); and
- (b) then multiplying Period AS by the factor specified by the Department for that purpose.

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

- (a) election to buy additional service will cease from that date; and
- (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member’s pensionable pay in accordance with regulation 136B(6) and (7).

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

- (a) regulation 136C(3), if the member is under age 60 on 1st October 2009; or
- (b) regulation 136C(4), if the member is age 60 or over on that date.

This is subject to regulation 136R.

Treatment of unreduced retirement lump sum

136F

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person's option to join this Section of the Scheme was received by the Department in accordance with regulation 136B, had made an election under regulation 68 of the 1995 Regulations (Right to buy an unreduced lump sum) to—

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

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

(2) Those conditions are that the election—

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

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

- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 136B(6) and (7);
- (b) any liability to pay additional contributions under the election will cease from, and including, 1st April 2008; and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

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

136G

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

- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 4 and 5 of this Part; and
- (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation 52(3) of the 1995 Regulations (Early leavers returning to superannuable employment).

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

- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 136C that relates to one or more periods of superannuable employment in the 1995 Section that occurred before a break of 12 months or more in such employment (“an earlier service credit”); and

- (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 136C that relates to a period of superannuable employment in the 1995 Section that occurred after a break of 12 months or more in such employment.

This is subject to paragraph (3).

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

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

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

Pension debit members

136H

- (1) This regulation applies where, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member.

(2) The amount of the reduction to be made to the Optant's pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant's pension under the 1995 Section calculated in accordance with Article 28 of the 1999 Order (Reduction of benefit) adjusted by the factor referred to in paragraph (3).

(3) The factor referred to in paragraph (2) is the factor specified by the Department for that purpose.

(4) The Department may, after taking advice from the Scheme actuary, make such modifications to—

- (a) the Optant's rights; and
- (b) as to the form of the Optant's benefits,

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

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

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

136I

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

- (a) whose earnings in respect of superannuable employment in the 1995 Section were reduced;
- (b) whose employer certified that the reduction in sub-paragraph (a) occurred in the circumstances described in paragraph (2) of regulation 82 of the 1995 Regulations (Members whose earnings are reduced);
- (c) who, subject to the agreement of the Department, would, on retirement or death, have become entitled to have a preserved pension calculated and paid as described

in regulation 49 of the 1995 Regulations (Preserved pension) in respect of superannuable service in the 1995 Section before the Optant's earnings were reduced; and

- (d) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 4 and 5 of this Part.

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

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

This is subject to paragraph (3).

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

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

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

136J

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

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

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

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

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

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

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

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

Meaning of “capped Optant service”

136K

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

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

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

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

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

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

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

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

136L

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

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

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

- (a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation apply to that Optant; and

- (b) the annual amount of pension referred to in paragraph (1)(a) to which the Optant is entitled shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.
- (3) In the case of a 2008 section Optant referred to in paragraph (1)(b)—
 - (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5); and
 - (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.
- (4) Except in the case of an Optant to whom paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).

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

- (5) The amount of the lump sum shall be determined by—
 - (a) applying the formula—

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

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (6) In the case of an Optant who—
 - (a) becomes entitled to an annual amount of pension payable under regulation 48; and
 - (b) has not attained age 60 on the day of becoming entitled to that pension,
 the amount of lump sum shall be determined as described in paragraph (7).
- (7) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—
 - (a) applying the formula—

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

and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.
- (8) In the case of an Optant who—
 - (a) becomes entitled to an annual amount of pension payable under regulation 49 for the first time; and
 - (b) has not attained age 60 on the day of becoming entitled to that pension,
 the amount of lump sum shall be determined as described in paragraph (9).
- (9) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—
 - (a) applying the formula—

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

and

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

(10) In the case of an Optant who—

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

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

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

- (a) applying the formula—

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

and

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

(12) In the case of an Optant—

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

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

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

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

- (a) applying the formula—

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

and

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

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

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

(16) For the purposes of this regulation—

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

“annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the Scheme apart from this regulation, together with any increases payable under the Pensions (Increase) Act (Northern Ireland) 1971(2), calculated as at the time payment would first be due;

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

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

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

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

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

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

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

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

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

Miscellaneous provisions

Transfers in: transitional provision

136M

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

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

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

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

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

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

This is subject to paragraph (5).

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

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

2008 Section Optants: Transitional Tier 2 ill-health pension

136N

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

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

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

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

This is subject to paragraph (5).

(3) In this regulation—

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

This is subject to paragraph (4).

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

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

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

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

1360

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

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

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

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

This is subject to paragraph (3).

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

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

136P

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

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

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

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

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

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

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

- (a) ceases to be entitled to a tier 1 ill-health pension; and

- (b) becomes entitled to a tier 2 ill-health pension under regulation 52 but which shall be calculated in accordance with paragraph (5).
- (5) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (4)

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

This is subject to paragraph (6).

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

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

136Q

- (1) This regulation applies to a 2008 Section Optant—
 - (a) who submits a form AW33 (or such other form as the Department is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 52;
 - (b) that form and supporting medical evidence was received by the Department before the end of the period of one year commencing on the day the Department received the Optant's option to join this Section of the Scheme; and
 - (c) following a consideration of the form and medical evidence referred to in subparagraph (a)—
 - (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 52, and
 - (ii) at the time the Optant is awarded a pension under that regulation the Department gives the Optant notice in writing in accordance with regulation 53(1)(b) that the Optant's case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 52(3)(a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 53, the Department determines that the Optant meets the condition in 52(3)(a), then as from the date on which that determination is made the Optant—
 - (a) ceases to be entitled to a tier 1 ill-health pension; and
 - (b) becomes entitled to a tier 2 ill-health pension under regulation 52 but which shall be calculated in accordance with paragraph (3).

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

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

This is subject to paragraph (4).

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

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

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

136R

(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 136E.

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation 13A of the 1995 Regulations (Ill-health pension on early retirement);
- (b) that form and supporting medical evidence was received by the Department before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation 67 of the 1995 Regulations (Paying for additional service and unreduced retirement lump sum by regular additional contributions); and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 52 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

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

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

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

(3) If—

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

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

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

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

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

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

136S

- (1) This regulation applies to a person who—
 - (a) on, or after, 1st October 2009—
 - (i) is an active member of the 1995 Section, or
 - (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation 65 of the 1995 Regulations (Absence because of illness or injury or certain types of leave);
 - (b) has submitted a form AW33 (or such other form as the Department was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 13A of the 1995 Regulations (Ill-health pension on early retirement); and
 - (c) that form and supporting medical evidence was received by the Department—
 - (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 136B, or

- (ii) if such a statement has been issued to that person, before the date specified by the Department for the purposes of paragraph (3) of that regulation.
- (2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).
- (3) The option under paragraph (2) may only be exercised if—
 - (a) the person gives notice in writing to the Department in such form as it requires; and
 - (b) that notice is received by the Department within a period of four months starting with, where—
 - (i) that person is sent a written notification of the Department’s decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation 13A of the 1995 Regulations (“the first decision”), the date of that decision,
 - (ii) that person is sent a written notification of the Department’s decision in respect of the stage one dispute, (“a stage one decision”), the date of that decision,
 - (iii) that person is sent a written notification of the Department’s decision in respect of the stage two dispute, (“a stage two decision”), the date of that decision, or
 - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

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

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

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

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

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

136T

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

Late payment of pension with actuarial increase for a 2008 Optant

136U

- (1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 45 after reaching the age of 65.
- (2) In the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—
- (a) the pensionable service that Optant is entitled to count under—
 - (i) regulation 136C,
 - (ii) regulation 136E (if any), and
 - (iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65; and
 - (b) any contributions paid under regulation 34, 36 or 37 before reaching that age,
- shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

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

- (a) before that pension had been reduced in accordance with regulation 136L; and
- (b) before any commutation under regulation 58.

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

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

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

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

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

136V

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

- (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (ill health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
- (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 52 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

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

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

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

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

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

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

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

(5) If the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service;

- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation 13B of the 1995 Regulations (Re-assessment of ill-health condition determined under regulation 13A); and
 - (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of later 2008 Section service on the termination of that later service,
- the Optant is entitled to the benefits set out in paragraph (6).
- (6) Those benefits are—
 - (a) a tier 2 ill-health pension paid in accordance with regulation 13B of the 1995 Regulations in respect of the earlier 1995 Section service; and
 - (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

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

136W

- (1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—
 - (a) is entitled to a tier 1 ill-health pension under regulation 13A of the 1995 Regulations (Ill-health pension on early retirement) in respect of service in the 1995 Section; and
 - (b) is an active or a non-contributing member in respect of service in this Section of the Scheme (“the later 2008 Section service”).
- (2) The lump sum payable on the death of an Optant referred to in paragraph (1) shall be—
 - (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant; and
 - (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 83.
- (3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2)
 - (a) is an amount equal to five times the annual rate of pension—
 - (a) payable under regulation 52(5), if the deceased Optant had not reached the age of 65; or
 - (b) payable under regulation 45, if the deceased Optant had reached the age of 65,
 to which the deceased Optant would have been entitled at the date of the Optant's death.
- (4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 49, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—
 - (a) payable under regulation 52(5), if the deceased Optant had not reached the age of 65; or
 - (b) payable under regulation 45, if the deceased Optant had reached the age of 65,
 to which the Optant would have been entitled on the last day of the Optant's pensionable service.
- (5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 49, the lump sum referred to in paragraph (2)(a) shall be determined by the Department after taking advice from the Scheme actuary.

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

136X

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

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

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

(3) “Relevant service” means—

- (a) in the case of a deceased Optant who was, at the date of the Optant’s death, an active member the greater of—
 - (i) the pensionable service the deceased Optant was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 52(5) if the deceased Optant had become entitled to a tier 2 ill-health pension at that date, and
 - (ii) the deceased Optant’s later 2008 Section service as an active member plus the difference between—
 - (aa) the aggregate of the Optant’s earlier 1995 Section service and the later 2008 Section service as an active member; and
 - (bb) 10 years pensionable service,where the amount of service in paragraph (aa) is less than that specified in paragraph (bb);
- (b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the Scheme on the date of Optant’s death.

(4) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of paragraph (3) of regulation 77 shall have the meaning given in paragraph (5).

(5) The “basic death pension” means the greater of—

- (a) 75% of the deceased Optant’s annual pension (disregarding any additional pension); and
- (b) 75% of the annual pension to which the deceased would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service plus the difference between—
 - (i) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service, and
 - (ii) 10 years pensionable service,

where the amount of service in (i) is less than that specified in (ii).

(6) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of paragraph (3) of regulation 78 shall have the meaning given in paragraph (7).

(7) The “basic death pension” means—

- (a) if the deceased Optant died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 76 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension); and
- (b) if the deceased died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
 - (i) 75% of the pension to which the deceased Optant would have been entitled if the deceased Optant had become entitled to a pension under regulation 45 on the date of death (disregarding any additional pension), and
 - (ii) 75% of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service that has been deferred plus the difference between—
 - (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service that has been deferred; and
 - (bb) 10 years pensionable service,

where the amount of service in paragraph (aa) is less than that specified in paragraph (bb).”.