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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 174**

The National Health Service Superannuation  
Scheme (2008 Section) (Scotland) Regulations 2013

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.A

INTRODUCTION

*Preliminary*

**Interpretation of Part 2: general**

**2.A.1.** In this Part—

- “the 1978 Act” means the National Health Service (Scotland) Act 1978(1);
- “the 1993 Act” means the Pension Schemes Act 1993(2);
- “the 1995 Act” means the Pensions Act 1995(3);
- “the 1995 Section” means the part of the scheme, the rules of which are set out in the 2011 Regulations;
- “the 1997 Act” means the National Health Service (Primary Care) Act 1997(4);
- “the 1999 Act” means the Welfare Reform and Pensions Act 1999(5);
- “the 2004 Act” means the Finance Act 2004(6);
- “the 2004 Regulations” means the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004(7);
- “the 2006 Act” means the National Health Service Act 2006(8);
- “the 2008 Act” means the Pensions Act 2008(9);
- “the 2008 Regulations” means the National Health Service Pension Scheme (Scotland) Regulations 2008(10);

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- (1) 1978 c.29.
  - (2) 1993 c.48.
  - (3) 1995 c.26.
  - (4) 1997 c.46.
  - (5) 1999 c.30.
  - (6) 2004 c.12.
  - (7) S.S.I. 2004/115, amended by paragraph 18 of schedule 4 to the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) and by S.S.I. 2004/162 and 215, 2005/337, 2006/247, 2007/206, 289, 392 and 501, 2008/27, 2009/183, 2010/93, 231 and 394, 2011/55, 2012/9, 36, 1479 and 1916 and S.I. 2010/234.
  - (8) 2006 c.41.
  - (9) 2008 c.30.
  - (10) S.S.I. 2008/224, amended by S.S.I. 2009/19 and 208, 2010/22 and 369, 2011/53 and 364, 2012/69 and 163 and S.I. 2010/234.

“2008 Section Optant” has the meaning given in regulation 2.K.1 (application of Chapter 2.K);

“the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010<sup>(11)</sup>;

“the 2011 Regulations” means the National Health Service Superannuation Scheme (Scotland) Regulations 2011<sup>(12)</sup>;

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

“additional pension”, in relation to a member, except where the context otherwise requires, means so much of any pension payable to a member as is payable by virtue of contributions made under regulations 2.C.8 (option to pay additional periodical contributions), 2.C.10 (option to pay lump sum contribution) and 2.C.11 (additional lump sum contributions by employing authority);

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

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

“automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;

“automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14 (jobholders excluded from automatic re-enrolment) of those Regulations<sup>(13)</sup>);.

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

- (a) announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets; or
- (b) where an order under section 19 (reserve powers) of the Bank of England Act 1998<sup>(14)</sup> is in force, any equivalent rate determined by the Treasury under that section;

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) of the 1993 Act<sup>(15)</sup> and “buy-out” is to be construed accordingly;

“capped transferred-in service” is to be construed in accordance with regulation 2.F.12;

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

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

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

- (a) Scottish Ministers or a Health Board; and
- (b) a local authority,

(11) S.I. 2010/772.

(12) S.S.I. 2011/117, amended by S.S.I. 2011/173 and 364 and 2012/69 and 163.

(13) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

(14) 1998 c.11.

(15) Section 19 was amended by S.I. 2001/3649, 2005/2050 and 2007/3014.

under section 15(2) (supply of goods and services to local authorities, etc.) of the 1978 Act<sup>(16)</sup>, under which Scottish Ministers or the Health Board is responsible for providing services for purposes related to the provision of health care;

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

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

“contracting Health Board” means—

- (a) in the case of a non-GP provider who is—
  - (i) a partner in a partnership that is—
    - (aa) a GMS practice (under a GMS contract);
    - (bb) a section 17C agreement provider (under a section 17C agreement); or
    - (cc) an HBPMS contractor (under an HBPMS contract);
  - (ii) a shareholder in a company limited by shares that is—
    - (aa) a GMS practice (under a GMS contract);
    - (bb) a section 17C agreement provider (under a section 17C agreement); or
    - (cc) an HBPMS contractor (under an HBPMS contract);
  - (iii) an individual who is—
    - (aa) a GMS practice (under a GMS contract);
    - (bb) a section 17C agreement provider (under a section 17C agreement); or
    - (cc) an HBPMS contractor (under an HBPMS contract),

the Health Board with which the partnership, company or (in the case of subparagraph (iii)) practice, provider or contractor entered into the contract or agreement referred to;

- (b) in the case of a principal practitioner, the Health Board on whose medical performers list the practitioner’s name appears; and
- (c) in the case of an assistant practitioner or a locum practitioner, the Health Board engaging the practitioner under a contract of employment or a contract for services and on whose medical performers list the practitioner’s name appears;

“contracting-out requirements” means the requirements mentioned in section 9(2) (requirements for certification of schemes: general) of the 1993 Act<sup>(17)</sup>;

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

“core hours” means the period beginning at 8.00 a.m. and ending at 6.30 p.m. on any day from Monday to Friday except Good Friday, Christmas Day and a bank holiday;

“corresponding health service scheme” means—

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<sup>(16)</sup> Section 15 was relevantly amended by paragraph 1(2) of schedule 1 to the Primary Medical Services (Scotland) Act 2004 ([asp 1](#)) and by paragraph 17 of schedule 17 of the Public Services Reform (Scotland) Act 2010 ([asp 8](#)).

<sup>(17)</sup> Section 9 was relevantly amended by section 136(3) of the Pensions Act 1995 ([c.26](#)), section 14(4) of, and Part 6 of Schedule 7 to, the Pensions Act 2007 ([c.22](#)) and paragraph 35(2) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) Act 1999 ([c.2](#)).

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972<sup>(18)</sup> and having effect in England and Wales;
- (b) a superannuation scheme provided under article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(19)</sup>;
- (c) a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald)<sup>(20)</sup>, in the case of a member who entered NHS employment on or before 31st March 2012; or
- (d) any other occupational pension scheme approved for this purpose by the Scottish Ministers;

“corresponding 1995 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the 1995 Section;

“corresponding 2008 scheme” means a corresponding health service scheme the provisions of which the Scottish Ministers have determined correspond to the provisions of this Section of the scheme;

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

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

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

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

“employing authority” means—

- (a) a Health Board, a Special Health Board, the Common Services Agency for the Scottish Health Service (constituted by section 10 of the 1978 Act<sup>(21)</sup>) or Healthcare Improvement Scotland (established by section 10A of the 1978 Act<sup>(22)</sup>);
- (b) the Mental Welfare Commission for Scotland established under section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(23)</sup>;
- (c) an OOH provider;
- (d) an HBPMS contractor;
- (e) a GMS practice;
- (f) a section 17C agreement provider;
- (g) any other body constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of this Section of the scheme; or
- (h) in relation to a person who is subject to a direction made under section 7 (extension of superannuation provisions of National Health Service Acts) of the Superannuation

<sup>(18)</sup> 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649.

<sup>(19)</sup> S.I. 1972/1073 (N.I. 10).

<sup>(20)</sup> 1984 c.8 (Tynwald).

<sup>(21)</sup> The Common Services Agency for the Scottish Health Service is also known as the NHS National Services Scotland. Section 10 was amended by paragraph 2 of Schedule 6 to the Health Services Act 1980 (c.53), section 66(2) to, and Schedule 10 to, the National Health Services and Community Care Act 1990 (c.19), paragraph 44 of Schedule 4 to the Health Act 1999 (c.8), paragraph 2(4) of schedule 2 to the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) and section 17(1) of the Patient Rights (Scotland) Act 2011 (asp 5).

<sup>(22)</sup> Section 10A was inserted by section 108 of the Public Services Reform (Scotland) Act 2010 (asp 8).

<sup>(23)</sup> 2003 asp 13. Section 4 was amended by section 111(2) of the Public Services Reform (Scotland) Act 2010 (asp 8).

(Miscellaneous Provisions) Act 1967(24) and subject to such modifications to these Regulations as the Scottish Ministers may in any particular case direct, any employer of such a person whom the Scottish Ministers agree to treat as an employing authority for the purposes of these Regulations;

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

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

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

“GMS contract” means a contract under section 17J (health boards’ power to enter into general medical services contract) of the 1978 Act(25) or under article 13 (provision of immediately necessary treatment) of the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004(26);

“GMS practice” means—

- (a) a registered medical practitioner(27) who is a principal practitioner;
- (b) two or more such individuals practising in a partnership; or
- (c) a company limited by shares,

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

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

- (a) under a GMS contract, section 17C agreement or HBPMS contract;
- (b) on behalf of an OOH provider; or
- (c) under a contract of employment or a contract for services with a Health Board which relates to arrangements by which it provides services under section 2C (functions of Health Boards: primary medical services) of the 1978 Act(28);

“GP provider” means a GP performer who is—

- (a) a GMS practice, a section 17C agreement provider or an HBPMS contractor;
- (b) a partner in a partnership that is a GMS practice, a section 17C agreement provider or an HBPMS contractor; or
- (c) a shareholder in a company limited by shares that is a GMS practice, section 17C agreement provider or an HBPMS contractor,

and who performs medical services as or on behalf of that practice, provider or contractor;

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

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(24) 1967 c.28. Section 7 was amended by S.I. 1968/1699, section 10(5) of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), paragraph 24 of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

(25) Section 17J was inserted by section 4 of the Primary Medical Services (Scotland) Act 2004 (asp 1).

(26) S.S.I. 2004/636. There are amendments to the Order which are not relevant for the purposes of these Regulations.

(27) “Registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978 (c.30), as amended by S.I. 2002/3135.

(28) Section 2C was inserted by section 1(2) of the Primary Medical Services (Scotland) Act 2004 (asp 1) and amended by the paragraph 1(3) of Schedule 1 to the National Health Service Reform (Scotland) Act 2004, section 37 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) and S.I. 2010/283.

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

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

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

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

“HBPMS contract” means a contractual arrangement for the provision of services in accordance with section 2C(2) (functions of health boards: primary medical services) of the 1978 Act between a Health Board and a HBPMS contractor;

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

“Health Board” means a Health Board constituted under section 2(1)(a) of the 1978 Act;

“the health service” has the meaning given in section 108(1) (interpretation and construction) of the 1978 Act;

“lifetime allowance”, in relation to a person, has the meaning given in section 218 (individual’s lifetime allowance and standard lifetime allowance) of the 2004 Act(29);

“lifetime allowance charge” has the meaning given in section 214(1) of the 2004 Act;

“local authority” means a council constituted under section 2 (constitution of councils) of the Local Government etc. (Scotland) Act 1994(30);

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

“lower earnings limit” is to be construed in accordance with section 5 (earnings limits and thresholds for Class 1 contributions) of the Social Security Contributions and Benefits Act 1992(31);

“lower tier ill health pension” is to be construed in accordance with regulation 2.D.8 (early retirement on ill health: active members and non-contributing members);

“lump sum rule” has the meaning given in section 166 (lump sum rule) of the 2004 Act(32);

“lump sum death benefit rule” has the meaning given in section 168 (lump sum death benefit rule) of the 2004 Act(33);

“medical performers list” means a list prepared by a Health Board pursuant to regulation 4(1) of the National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004(34);

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

(29) Section 218 was amended by paragraph 2(2) and (3) of Schedule 18 to the Finance Act 2011 (c.11).

(30) 1994 c.39. Section 2 was amended by paragraph 232(1) of Schedule 22 to the Environment Act 1995 (c.25).

(31) 1992 c.4. Section 5 was substituted by paragraph 1 of Schedule 9 to the Welfare Reform and Pensions Act 1999 (c.30) and amended by Part 4 of Schedule 7 to the Pensions Act 2007 (c.22) and Schedule 2 of the National Insurance Contributions Act 2008 (c.16).

(32) Section 166 was amended by paragraph 9 of Schedule 20 to the Finance Act 2007 (c.11).

(33) Section 168 was amended by Part 3 of Schedule 27 to the Finance Act 2007 (c.11) and paragraph 65 of Schedule 16 to the Finance Act 2011 (c.11).

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

“NHS employment” means employment with an employing authority (otherwise than under a contract for services);

“non-contributing member” means a member who—

- (a) is under age 75 and in NHS employment;
- (b) is no longer required to make contributions to this Section of the scheme in accordance with regulation 2.C.1(1); and
- (c) will be entitled to a pension under these Regulations—
  - (i) on ceasing to be employed in NHS employment and making a claim for the pension; or
  - (ii) upon reaching age 75;

“non-GP provider” applies as if the non-GP provider were a whole-time officer and means—

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

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 (categories of pension schemes) of the 1993 Act(35) which—

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

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(35) The definition of “occupation pension scheme” in section 1 was amended by [S.I. 2007/3014](#).

- (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter 1 (retirement benefit schemes) of Part 14 of the Income and Corporation Taxes Act 1988<sup>(36)</sup> or whose application for approval under that Chapter was under consideration;
- (ii) a statutory scheme as defined in section 612(1) (interpretation) of the Income and Corporation Taxes Act 1988<sup>(37)</sup>; or
- (iii) a scheme to which section 608 (superannuation funds approved before 6th April 1980) of the Income and Corporation Taxes Act 1988<sup>(38)</sup> applied, and on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

“officer” means a person (other than a GP performer) employed by an employing authority;

“OOH provider” has the meaning given in regulation 2.A.16 (out of hours providers);

“OOH services” means services which are required to be provided in the out of hours period and which if provided during core hours by a GMS practice, a section 17C agreement provider or a HBPMS contractor to patients to whom the practice or contractor is required by a GMS contract, a section 17C agreement or an HBPMS contract to provide essential services, would be or would be similar to essential services;

“opting out” and related expressions are to be construed in accordance with regulation 2.B.6 (opting out of this Section of the scheme);

“out of hours period” means—

- (a) the period beginning at 6.30 p.m. on any day from Monday to Thursday and ending at 8.00 a.m. the following day;
- (b) the period between 6.30 p.m. on Friday and 8.00 a.m. the following Monday; or
- (c) Christmas Day, New Year’s Day and any other local or public holiday which has been agreed in writing by the Health Board when entering into a GMS contract,

and part of an out of hours period means any part of any one or more of the periods described in sub-paragraphs (a) to (c);

“pay period” means, in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;

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

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

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

“pension debit member” means a member of this Section of the scheme whose benefits, or future benefits, under this scheme have been reduced under section 31 (reduction under pension sharing order following divorce or nullity of marriage) of the 1999 Act, whether before or after the person became a member of this Section of the scheme;

“pension sharing order or provision” means such an order or provision as is mentioned in section 28(1) (activation of pension sharing) of the 1999 Act<sup>(39)</sup>;

(36) 1988 c.1. Chapter 1 of Part 14 was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 36 to the Finance Act 2004 (c.12).

(37) Section 612 was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 36 to the Finance Act 2004.

(38) Section 608 was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 36 to the Finance Act 2004.

(39) Section 28 was relevantly amended by paragraph 159 of Schedule 27 to the Civil Partnership Act 2004 (c.33).



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

“pensionable pay” has the meaning given in regulations 2.A.9 (meaning of “pensionable pay”) (read with regulation 2.A.10 (pensionable pay: breaks in service));

“pensionable service” has the meaning given in regulations 2.A.3 (meaning of “pensionable service”) and 2.A.4 (meaning of “pensionable service”: part-time service) (read with regulation 2.A.5 (pensionable service: breaks in service));

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

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

- (a) in the case of a scheme established on or after 6th April 2006, is a registered pension scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Chapter 2.F (transfers); and
- (b) in the case of a scheme established before that date, was—
  - (i) approved by the Commissioners for Her Majesty’s Revenue and Customs for the purposes of Chapter 4 (personal pension schemes) of Part 14 of the Income and Corporation Taxes Act 1988<sup>(40)</sup>; and
  - (ii) on 6th April 2006 became a registered pension scheme for the purposes of the 2004 Act;

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

“practitioner” means—

- (a) a registered medical practitioner<sup>(41)</sup> (other than a GP registrar) who is a GP provider, a GP performer or a locum practitioner; or
- (b) a dentist,

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

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

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

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

“qualifying service” has the meaning given in regulation 2.A.6 (meaning of “qualifying service”) (read with regulation 2.A.7 (qualifying service: disregard of breaks in service));

“recent leaver” has the meaning given in regulation 2.E.6(3) (amount of surviving adult’s pension: recent leavers);

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<sup>(40)</sup> Chapter 4 of Part 14 was repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c.12).

<sup>(41)</sup> “Registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978 (c.30), as amended by S.I. 2002/3135.

“reckonable pay” has the meaning given in regulation 2.A.11 (meaning of “reckonable pay”: general) (read with regulations 2.A.12 (adjustments for inflation in determining reckonable pay) to 2.A.15 (meaning of “reckonable pay”: concurrent part-time employments));

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

“retail prices index” has the meaning given in section 989 (the definitions) of the Income Tax Act 2007(42);

“safeguarded rights” has the meaning given in section 68A(1) (safeguarded rights) of the 1993 Act(43);

“the scheme”, except where the context otherwise requires, means the National Health Service superannuation scheme for Scotland, the rules of which are set out in these Regulations and the 2011 Regulations;

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

“scheme administrator” means the scheme administrator under regulation 2.J.1;

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

“section 17C agreement” means an agreement made under section 17C (personal medical or dental services) of the 1978 Act(44);

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

“Special Health Board” means a Special Health Board constituted under section 2(1)(b) of the 1978 Act;

“State pension age” means pensionable age, as defined in section 181(1) (general interpretation) of the 1993 Act(45);

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

“this Section of the scheme” means the part of the scheme, the rules of which are set out in these Regulations;

“trade dispute” has the meaning given in section 35(1) (interpretation) of the Jobseekers Act 1995(46);

“upper tier ill health pension” is to be construed in accordance with regulation 2.D.8 (early retirement on ill health: active members and non-contributing members);

“Waiting Period Joiner” has the meaning given in regulation 2.L.1; and

“whole-time”, in relation to an employment that is comparable to one or more part-time employments, means—

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

(42) 2007 c.3. The definition of “retail prices index” was amended by paragraph 16 of Schedule 3 to the Statistics and Registration Service Act 2007 (c.18).

(43) Section 68A(1) was inserted by section 36 of the Welfare Reform and Pensions Act 1999 and subsequently repealed by Part 2 of Schedule 11 to the Pensions Act 2008 (c.30).

(44) Section 17C was inserted by section 21(2) of the National Health Service (Primary Care) Act 1997 (c.46) and amended by section 2(2) of the Primary Medical Services (Scotland) Act 2004 (asp 1).

(45) The definition of “pensionable age” in section 181(1) was inserted by paragraph 17 of Schedule 4 to the Pensions Act 1995 (c.26).

(46) 1995 c.18. There are amendments to section 35(1) which are not relevant to these Regulations.

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

### **Interpretation: further provisions**

**2.A.2.**—(1) In determining whether a person who is an active member or a pensioner member of this Section of the scheme is also a deferred member of it, the fact that the person is an active member or a pensioner member and the person’s rights as such are to be disregarded.

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

### *Pensionable service*

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

**2.A.3.**—(1) Subject to paragraph (2), in this Part references to a member’s “pensionable service” are references to the aggregate of the following periods—

- (a) any period of service in respect of which the member contributes to this Section of the scheme under regulation 2.C.1 (contributions by members);
  - (b) any period of absence from service which counts as pensionable service under regulation 2.A.5 (pensionable service: breaks in service);
  - (c) any period of service credited to the member as pensionable service under Chapter 2.F (transfers);
  - (d) any period of pensionable service which the member is entitled to count under Chapter 2.K (2008 Section Optants); and
  - (e) any period of service which the member was entitled to count as pensionable service under regulation 2.A.2 (meaning of “pensionable service”) of the 2008 Regulations immediately before these Regulations came into force.
- (2) A member’s pensionable service does not include—
- (a) any period of service in respect of which the Scottish Ministers have paid contributions to another occupational pension scheme in respect of the member;
  - (b) in the case of a pensioner member or deferred member, any period taken into account—
    - (i) in determining the member’s entitlement to the pension in payment or, as the case may be, the deferred pension; or
    - (ii) in calculating the amount of that pension,but, in the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement: members aged at least 55) this is subject to paragraph (6);
  - (c) any period of service in respect of which the Scottish Ministers’ liability to provide benefits is discharged—

- (i) by the payment of a contributions equivalent premium under section 55(2) (payment of state scheme premiums on termination of certified status) of the 1993 Act<sup>(47)</sup>;
- (ii) under regulation 2.C.18 (repayment of contributions); or
- (iii) by the payment of a transfer value payment on transfer-out under Chapter 2.F (transfers); or
- (d) subject to paragraph (3), any period of service which would result in the aggregate mentioned in paragraph (1) exceeding 45 years.
- (3) A member's pensionable service must not exceed 45 years unless—
  - (a) the member gives notice in writing to the Scottish Ministers and the member's employing authority of an intention to remain in pensionable service beyond 45 years; and
  - (b) that notice is received by the Scottish Ministers and the member's employing authority—
    - (i) not earlier than three months before the member reaches 45 years pensionable service; and
    - (ii) by the end of the pay period during which the member reaches the 45 year limit.
- (4) If the notice required by paragraph (3) has been properly received and the member has pensionable service in excess of 45 years—
  - (a) benefits under this Part must be calculated by reference to a maximum of 45 years of pensionable service; and
  - (b) the Scottish Ministers must select the years by reference to which the benefits are to be calculated, selecting the years which produce the most favourable result for the member.
- (5) If, when the employment in which a person is an active member ceases, a payment is made in respect of untaken leave, for the purposes of this Part—
  - (a) the member's pensionable service is to be treated as continuing for a period equal to the period of leave in respect of which payment is made; and
  - (b) the payment is to be treated as the member's pensionable pay for that period.
- (6) In the case of a pensioner member or deferred member entitled to a pension under regulation 2.D.5 (partial retirement: members aged at least 55), paragraph (2)(b) only applies to so much of the member's pensionable service as is mentioned in regulation 2.D.5(9)(a).
- (7) Where a member is also a member of the 1995 Section, any reference in this Part to "45 years" must be taken to be a reference to a shorter period determined by the formula—

$$SP = \text{years} - LPS$$

where—

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

*LPS* is the length of pensionable service (within the meaning of the 2011 Regulations), measured in years and days, giving rise to membership of the 1995 Section and, in the case of a member of that Section who has become entitled to a pension (including a preserved pension) under that Section, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.

<sup>(47)</sup> Section 55 was amended by section 141(1) of, and Part 3 of Schedule 7 to, the Pensions Act 1995 (c.26), paragraph 7(1)(a) of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c.30), S.I. 2005/2050 and Part 6 of Schedule 7 to the Pensions Act 2007 (c.22).

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

**2.A.4.**—(1) Subject to paragraphs (2) to (6), the number of days of a member’s pensionable service in part-time employment for a period is calculated by multiplying the total hours of employment during the period by 7, and dividing the result by the number of hours of employment per week for a comparable whole-time employment.

(2) If the part-time employment is for a specified number of sessions per week, subject to paragraphs (3) to (6)—

- (a) paragraph (1) does not apply; and
- (b) the number of days of the member’s pensionable service in the part-time employment for the period is calculated by multiplying the number of sessions of employment during the period by 7, and dividing the result by the number of sessions per week of the length of the specified sessions for a comparable whole-time employment.

(3) If during the period for which a part-time employment is held there is an alteration—

- (a) in the case of an employment to which paragraph (1) applies, in the number of hours of employment per week for a comparable whole-time employment; or
- (b) in the case of an employment to which paragraph (2) applies, in the number of specified sessions per week or the length of those sessions for a comparable whole-time employment,

separate calculations must be made under paragraph (1) or, as the case may be, paragraph (2) for the periods before and after the alteration.

(4) If, apart from this paragraph, a member’s pensionable service in respect of the part-time employments held for a period, calculated in accordance with paragraph (1) or (2), would exceed that period, the excess is ignored.

(5) Paragraphs (1) and (2) do not apply for the purposes of regulation 2.A.3(3) (meaning of “pensionable service”), and for those purposes part-time employments held concurrently are treated as a single employment.

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

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

**2.A.5.**—(1) Paragraph (2) applies if a member is absent from work because of—

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

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

(3) If a member is on leave of absence that does not fall within paragraph (1)(a) to (e), and contributes to this Section of the scheme under regulation 2.C.1 by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—

- (a) where the member contributes for a continuous period of 6 months commencing with the first day of the member’s leave of absence, 6 months; and

- (b) where the member contributes for a continuous period of less than 6 months commencing with the first day of the member's leave of absence, the period in respect of which the member pays those contributions.
- (4) If, having paid contributions for the period mentioned in paragraph (3)(a) a member remains on a leave of absence that does not fall within paragraph (1)(a) to (e) and contributes to this Section of the scheme both member contributions under regulation 2.C.1 and employer contributions under regulation 2.C.5 (contributions by employing authorities: general) by contributions made at the same intervals as those made by the member before the absence, the maximum period of such leave that can be counted as pensionable service under this paragraph is—
- (a) where the member contributes for a continuous period of 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), 18 months; and
- (b) where the member contributes for a continuous period of less than 18 months commencing immediately after the expiry of the period mentioned in paragraph (3)(a), the period in respect of which the member pays those contributions.
- (5) This paragraph applies if a person—
- (a) ceased to be an active member because of—
- (i) ceasing to be employed in an employment in which the person is eligible to be such a member; or
- (ii) exercising the option under regulation 2.B.6 (opting out of this Section of the scheme); and
- (b) less than 12 months after the date on which the person ceased to be an active member becomes such a member again.
- (6) If paragraph (5) applies, the person's pensionable service before the person ceased to be an active member and after the person became such a member again is to be treated as a single continuous period of pensionable service, unless paragraph (7) applies<sup>(48)</sup>.
- (7) This paragraph applies if—
- (a) the person does not become a deferred member in respect of the pensionable service before the break in which the person was an active member;
- (b) the person has received a repayment of contributions under regulation 2.C.18 (repayment of contributions) in respect of that service (but see paragraph (9)); or
- (c) the person's rights under this Section of the scheme in respect of that service have been extinguished under regulation 2.F.7 (effect of transfers-out) because a transfer value payment has been made in respect of them.
- (8) In the case of a member who leaves pensionable service whilst absent from work because of—
- (a) illness or injury;
- (b) maternity leave;
- (c) adoption leave;
- (d) paternity leave; or
- (e) parental leave,
- this regulation applies as if the reference to 12 months in paragraph (5)(b) were a reference to three years.
- (9) Paragraph (7)(b) does not apply if the person repays to the Scottish Ministers any contributions repaid to the person as mentioned in that paragraph, together with any interest paid to the person on

<sup>(48)</sup> Where paragraph (6) applies in respect of the service in which the person was an active member and becomes an active member again, see Chapter 2.G (re-employment and rejoining the scheme).

those contributions, before the expiry of the period of 6 months beginning with the date on which the person becomes an active member again.

### *Qualifying service*

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

**2.A.6.—**(1) In this Part, references to a member’s qualifying service, are references to the aggregate of the following periods—

- (a) the member’s pensionable service under this Part other than such pensionable service as is referred to in regulation 2.A.3(1)(c) (meaning of “pensionable service”);
- (b) in the case of a person in respect of whom a transfer value in respect of the person’s rights under another pension arrangement (including the 1995 Section) has been accepted under Chapter 2.F (transfers), a period equal to the person’s period as an active member in any occupational pension scheme in respect of which the rights accrued;
- (c) in the case of a person who—
  - (i) became an active member on the transfer of the person’s employment to a new employer as the result of a transfer of an undertaking to that employer; and
  - (ii) has rights under another occupational pension scheme to which the person was eligible to belong in the person’s employment with the former employer, in respect of which no transfer payment has been accepted under regulation 2.F.10 (acceptance of transfer value payments),  
the period of employment that qualified the member for those rights;
- (d) any period treated as qualifying service under paragraph (3), (5) or (6) or under regulation 2.A.7 (qualifying service: disregard of breaks in service);
- (e) where the member ceased to be an active member under Part 3 less than 12 months before becoming a member under this Part, any period of qualifying service under Part 3;
- (f) in the case of a person—
  - (i) who is eligible to join this Section of the scheme by virtue of regulation 2.B.1(5)(c) (eligibility: general); and
  - (ii) for whom the interval between leaving the 1995 Section and joining this Section of the scheme is less than one month,  
a period equal to the period of qualifying service (within the meaning of the 2011 Regulations), measured in years and days, that the member was entitled to count under regulation C3 (meaning of “qualifying service”) of the 2011 Regulations when the member left the 1995 Section;
- (g) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 2.K (2008 Section Optants);
- (h) in the case of a Waiting Period Joiner (as defined in regulation 2.L.1(2)), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section;
- (i) in the case of a person who is eligible to join this Section of the scheme by virtue of regulation 2.B.1(5)(e), (g) or (h) (eligibility: general), a period equal in length to the period of qualifying service which the member is entitled to count under the 1995 Section; and
- (j) any period of service which the member was entitled to count as qualifying service under regulation 2.A.5 (meaning of “qualifying service”) of the 2008 Regulations immediately before these Regulations came into force.

- (2) Paragraph (3) applies if a member who is employed on a casual basis—
  - (a) ceases to pay contributions because of a break in the employment in which the member is an active member of a period not exceeding three months; and
  - (b) re-enters employment in which the member is eligible to be an active member on the same basis after the break.
- (3) For the purposes of this Part, the member is to be treated as—
  - (a) continuing to be in qualifying service during the break in the employment; and
  - (b) not being required to rejoin this Section of the scheme on re-entering the employment<sup>(49)</sup>.
- (4) If—
  - (a) a pension becomes payable to a member under regulation 2.D.11 (early retirement on termination of employment by employing authority) in a case where regulation 2.D.13(5) (exceptions to requirement that NHS employment must have ceased) applies; and
  - (b) the member has elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member,

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

(5) In determining the service that is pensionable service for the purposes of this regulation, regulation 2.A.4 (meaning of “pensionable service”: part-time service) does not apply, but for those purposes part-time employments held concurrently is to be treated as a single employment.

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

**2.A.7.—**(1) This regulation applies for the purpose of calculating the qualifying service of a member whose pensionable service ceases for an interval (other than in circumstances where regulation 2.A.6(2) (meaning of “qualifying service”) applies).

- (2) Subject to paragraph (6), if the interval—
  - (a) does not exceed one month; or
  - (b) is due to a trade dispute,

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

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

- (4) Subject to paragraph (6), if—
  - (a) a person who is an active member ceases to be employed in the employment that qualifies the person to belong to this Section of the scheme and becomes a deferred member, but not a pensioner member, in respect of the service in that employment; and
  - (b) after a period not exceeding 12 months the person becomes employed again in such an employment and becomes an active member again in that employment,

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

- (5) Subject to paragraph (6), if—

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<sup>(49)</sup> For the other rules applying where there is a short break in service, see regulation 2.A.7.



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

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

(6) Where—

- (a) the person has received a repayment of contributions under regulation 2.C.18 (repayment of contributions) in respect of the earlier period, paragraphs (4) and (5) do not apply (but see paragraph (7)); or
- (b) the person's rights under this Section of the scheme in respect of that period have been extinguished under regulation 2.F.7 (effect of transfers-out) because a transfer value payment has been made, paragraphs (2), (4) and (5) do not apply.

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

(8) If—

- (a) a member is a deferred member or pensioner member in respect of the period of pensionable service before pensionable service ceases for an interval; and
- (b) the periods of pensionable service before and after pensionable service ceases for an interval are not treated as a single period of continuous service under regulation 2.A.5(6) (pensionable service: breaks in service) or regulation 2.G.3(2)(a) (exception to general rule),

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

### *Calculating service*

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

**2.A.8.**—(1) References in this Part to any period expressed in days are references to the period in question, ignoring 29th February, expressed in days.

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

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

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

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

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

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

- (a) the days referred to in paragraph (2); and

(b) the full days referred to in paragraph (3),  
are to be converted into years by dividing the number of days by 365, and using the result to four decimal places.

### *Pensionable pay*

#### **Meaning of “pensionable pay”**

**2.A.9.**—(1) In this Part, subject to the following provisions of this regulation, “pensionable pay” means all salary, wages, fees and other regular payments made to a person in respect of employment in which the person is an active member of this Section of the scheme.

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

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

(3) “Pensionable pay” does not include—

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

(4) If—

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

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

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

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

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

(7) In the case of a non-GP provider who is in partnership with a principal medical practitioner practising in partnership, the pensionable earnings of each non-GP provider who is a partner in a partnership is to be calculated by aggregating the pensionable earnings of each partner (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them

who are not included in this Section of the scheme and, subject to paragraph (8), dividing the total equally by reference to the number of such partners.

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

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

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

(11) A notice given under this regulation—

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

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

**2.A.10.**—(1) Paragraph (2) applies if a member is absent from work because of—

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

and the earnings used to calculate the member's pensionable pay under regulation 2.A.9 (meaning of "pensionable pay") are reduced or cease.

(2) For the purposes of this Part (apart from regulations 2.C.1 (contributions by members) and 2.C.2 (contribution rate for members other than non-GP providers) and subject to paragraph (7)) in the case of a non-GP provider, or paragraph (3) in the case of a member who is not a non-GP provider, amounts equal to the pensionable pay that the member would have received if those circumstances had not applied are to be treated as having been paid to the member.

(3) Paragraph (2) does not apply to a member who is not a non-GP provider falling within paragraph (1)(a) as respects any period after the earnings used to calculate the member's pensionable pay under regulation 2.A.9 (meaning of "pensionable pay") have ceased to be paid to the member.

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

- (a) paragraph (1), the earnings used to calculate the member's pensionable pay under regulation 2.A.9 are reduced, amounts equal to the reduced earnings are to be treated as pensionable pay; and

- (b) paragraph (1)(b) to (e), the earnings used to calculate the member's pensionable pay under regulation 2.A.9 are reduced, during any period following that period whilst the member continues to fall within that paragraph and no such earnings are paid, amounts equal to the reduced earnings are to be treated as pensionable pay.
- (5) For the purposes of paragraph (4)(b), any pay received by a woman on maternity leave in respect of any days during which the member returns to work for the purposes of keeping in touch with the workplace is to be ignored.
- (6) For the purposes of this Part, during any period of absence which counts as pensionable service under regulation 2.A.5(3) or (4) (pensionable service: breaks in service) amounts equal to the rate of the member's pensionable pay immediately before the absence are to be treated as pensionable pay.
- (7) In the case of a non-GP provider—
- (a) who is one of a number of non-GP providers or practitioners who have elected as described in regulation 2.A.9(8), each non-GP provider's or practitioner's pensionable earnings are to be calculated as if the partnership's aggregate pensionable earnings were equal to the amount of the partnership's aggregate pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or ceased; and
  - (b) except where the non-GP provider's pensionable pay falls to be calculated as described in sub-paragraph (a), the non-GP provider are to be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before the non-GP provider's earnings were reduced or ceased.
- (8) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies—
- (a) a non-GP provider falling within paragraph (1)(a) is, subject to sub-paragraph (b), to be treated as having continued in pensionable employment for a period of 12 months from the date on which the member's earnings ceased and the member is not to be treated as having left pensionable employment until the end of that 12 month period;
  - (b) a non-GP provider falling within paragraph (1)(b) to (e) who paid contributions on the basis of reduced earnings in accordance with paragraph (4)(b) must, subject to paragraph (9), continue to pay contributions at that rate, except that no refund of contributions or other benefit is payable until the member actually leaves pensionable employment; and
  - (c) a member other than a non-GP provider is, subject to paragraph (5), to be treated as having left pensionable employment except that no refund of contributions or other benefit is payable until the member actually leaves pensionable employment.
- (9) For the purposes of paragraph (8)(a)—
- (a) during the 12 month period, the non-GP provider's pensionable earnings are to be calculated as described in paragraph (7)(a) or (b) (whichever is applicable); and
  - (b) at the end of the 12 month period, when the member is regarded as having left pensionable employment, no refund of contributions or other benefit is payable until the member actually leaves employment.
- (10) For the purposes of paragraph (8)(b), the rate of contributions payable is the rate that would have been payable on the basis of reduced earnings in accordance with paragraph (4)(a) had the non-GP provider's reduced earnings excluded any earnings for a day during which the non-GP provider, whilst on maternity leave, returned to work for the purposes of keeping in touch with the workplace.
- (11) If a member fails to pay any contributions which are required to be paid to this Section of the scheme in respect of a period of absence to which this regulation applies, the member is to be treated as having left pensionable employment except that no refund of contributions or other benefit is payable unless the member actually leaves pensionable employment.

(12) If a member to whom this regulation applies—

- (a) leaves pensionable employment; or
- (b) by virtue of paragraph (8)(c), (9)(b) or (11) is treated as having left pensionable employment without becoming entitled to a preserved pension,

then if the member later returns to pensionable employment regulation 2.A.5(5) (pensionable service: breaks in service) applies as if the reference to 12 months was a reference to three years.

(13) The benefits payable on the death of a member whose earnings ceased during a period of absence to which paragraph (7) applies is to be calculated as if the member had died in pensionable employment on the day before the member’s earnings ceased.

### *Reckonable pay*

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

**2.A.11.**—(1) This regulation applies for the purpose of determining the meaning of “reckonable pay”, in relation to—

- (a) a member whose active membership ceases;
  - (b) a member becoming entitled to the immediate payment of a pension during the member’s active membership period—
    - (i) on the exercise of the option under regulation 2.D.5 (partial retirement: members aged at least 55); or
    - (ii) under regulation 2.D.1(1)(b)(ii) (normal retirement pensions); or
  - (c) a non-contributing member.
- (2) This regulation is subject to regulations 2.A.12 to 2.A.15, 2.K.7 and 2.K.9 to 2.K.11.
- (3) A member’s “reckonable pay” is determined by the formula—

$$IRP \times \frac{RPI}{RPa}$$

where—

*IRP* is the interim reckonable pay determined in accordance with paragraph (4), (6) or (7), as appropriate, before any adjustment for inflation in accordance with regulation 2.A.12 (adjustments for inflation in determining reckonable pay);

*RPa* is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, including any adjustment for inflation described in regulation 2.A.12; and

*RPi* is the annual rate of retirement pension the member would be entitled to if the reckonable pay used to calculate it was the interim reckonable pay, excluding any adjustment for inflation described in regulation 2.A.12, but instead including any increases that pay would attract if it was the annual rate of an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971(50).

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

- (5) In this regulation—  
“the relevant day” means—

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(50) 1971 c.56. Section 5(1) was amended by paragraph 85 of Schedule 6 to the Superannuation Act 1972 (c.11).

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

(b) the person held that employment concurrently during that period with another employment in which the person was an active member,  
the member's pensionable pay for that period in the other employment must be taken into account in that determination.

- (12) For the purposes of this regulation, pensionable service does not include—
- (a) any period of pensionable service that a member is entitled to count under Chapter 2.F (transfers) unless the transfer value payment in respect of that service is accepted from a corresponding 2008 scheme;
  - (b) any period of pensionable service that a Section 2008 Optant is entitled to count under—
    - (i) regulation 2.K.3 (service credited from the 1995 Section);
    - (ii) regulation 2.K.5 (treatment of additional service); or
    - (iii) 2.K.13 (transfers-in: transitional provision).

### **Adjustments for inflation in determining reckonable pay**

- 2.A.12.**—(1) In determining—
- (a) the pensionable pay for the period of pensionable service referred to in regulation 2.A.11(4) (meaning of “reckonable pay”: general);
  - (b) the period of 1095 days for which the member's pensionable pay was the highest for the purposes of regulation 2.A.11(6); or
  - (c) the pensionable pay for either of the periods of pensionable service referred to in regulation 2.A.11(7),

the amount of pensionable pay is to be adjusted for inflation.

(2) The reference in paragraph (1) to adjusting the amount of pensionable pay for inflation is a reference to increasing the member's pensionable pay (for a specified period or periods) by an amount equal to the amount by which, at the relevant day, an official pension within the meaning of section 5(1) of the Pensions (Increase) Act 1971(**51**) first qualifying for an increase under that Act on the same day as the specified period, or periods, ended, would have been increased (if at all).

- (3) In this regulation—
- “specified period” means any single scheme year falling in the period, or periods, referred to in regulation 2.A.11(4), (6) or (7); and
  - “the relevant day” has the meaning given in regulation 2.A.11(5).

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

**2.A.13.**—(1) This regulation applies for determining the amount of a member's pensionable pay for the purposes of calculating so much of any benefit under this Section of the scheme as falls to be calculated by reference to capped transferred-in service.

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

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

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(51) 1971 c.56. Section 5(1) was amended by paragraph 85 of Schedule 6 to the Superannuation Act 1972 (c.11).

- (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.
- (4) If the retail prices index for the month of September preceding the tax year 2009/10 or any later tax year is not higher than it was for the previous September, the figure for that year is the same as for the previous tax year.
- (5) In this regulation—
- “capped transferred-in service” has the meaning given in regulation 2.F.12;
  - “pensionable pay” has the meaning given in regulation 2.A.9; and
  - “permitted maximum” means—
- (a) in relation to the tax year 2008/09, £117,600; and
  - (b) in relation to any later tax year, the figure found for that year under paragraphs (3) and (4).

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

**2.A.14.**—(1) This regulation applies if a member’s reckonable pay falls to be determined under regulation 2.A.11 (meaning of “reckonable pay”: general) by reference to the member’s pensionable pay for any period for a part-time employment that was not held concurrently with any other such employment in which the member was an active member.

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

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

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

(5) This regulation does not apply to the calculation of the reckonable pay of an active member or a pensioner member for the purposes of regulation 2.E.17(1) or (2) (amount of lump sum: single capacity members and recent leavers).

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

**2.A.15.**—(1) This regulation applies if under regulation 2.A.11(11) (meaning of “reckonable pay”: general) a member’s reckonable pay falls to be determined by reference to the member’s pensionable pay for any period for two or more part-time employments held concurrently during that period.

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

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- Step 1 — Calculate the reckonable pay for each of the employments under regulation 2.A.14 (meaning of “reckonable pay”: non-concurrent part-time employment) as if it were not held concurrently with any other such employment.
  - Step 2 — Find the appropriate fraction for each of the employments (see paragraph (3)).



Step 3 — Add together the appropriate fraction of the reckonable pay for each of the employments as calculated at Step 1.

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

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

where—

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

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

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

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

where—

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

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

(5) If—

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

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

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

### **Out of hours providers**

**2.A.16.**—(1) In this Part, an “OOH provider” means—

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

(i) in which all the members of the company are registered medical practitioners<sup>(52)</sup>, HBPMS contractors, GMS practices or section 17C agreement providers and the majority of those members are—

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

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

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

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

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(52) “Registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978 (c.30), as amended by S.I. 2002/3135.

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

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

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

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

(5) Where a company limited by guarantee or other body corporate makes an application and—

- (a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the date on which approval is actually given (the “approval date”); and
  - (b) it approves that application,
- that approval takes effect on the later of the nominated date (if any) and the approval date.
- (6) NHS employment is to be treated as commencing on the later of the nominated date (if any) and the approval date.
  - (7) For the purposes of this regulation—
    - (a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be; and
    - (b) the nominated date cannot be earlier than 1st April 2004.
  - (8) The appointed Board may give an OOH provider a notice in writing terminating its participation in this Section of the scheme where that provider—
    - (a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation 2.C.7(2) (guarantees, indemnities and bonds);
    - (b) has ceased to satisfy the conditions for approval; or
    - (c) has notified or has an obligation to notify the Board that any one of the following events has occurred in respect of the OOH provider—
      - (i) a proposal for a voluntary arrangement has been made or approved under Part 1 (company voluntary arrangements) of the Insolvency Act 1986<sup>(53)</sup> (“the 1986 Act”);
      - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 (administration) to the 1986 Act<sup>(54)</sup>;
      - (iii) a receiver, manager or administrative receiver has been appointed under Part 3 (receivership) of the 1986 Act;
      - (iv) a winding up petition has been presented, a winding up order has been made or a resolution for voluntary winding up has been passed under Part 4 (winding up of companies registered under the Companies Acts) or Part 5 (winding up of unregistered companies) of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 (instrument of dissolution) of the Industrial and Provident Societies Act 1965<sup>(55)</sup>; or
      - (v) notice has been received by the OOH provider that it may be struck off the register of companies, or an application to strike it off has been made, under Part 31 (dissolution and restoration to the register) of the Companies Act 2006<sup>(56)</sup>.
  - (9) An OOH provider—
    - (a) must give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (8)(c) and must give such notice on the same day as that event; and
    - (b) that wishes to cease to participate in this Section of the scheme must give the appointed Board and its employees not less than three months’ notice in writing (to commence with the date of the notice) of that fact.
  - (10) An OOH provider ceases to participate in this Section of the scheme on—
    - (a) such date as the appointed Board may specify in notice under paragraph (8); or

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<sup>(53)</sup> 1986 c.45.

<sup>(54)</sup> Schedule B1 was inserted by Schedule 16 of the Enterprise Act 2002 (c.40).

<sup>(55)</sup> 1965 c.12. Section 58 was amended by S.I. 2001/2617 and 3649 and 2011/2687.

<sup>(56)</sup> 2006 c.46.

- (b) the day upon which the period referred to in paragraph (9)(b) expires where a notice under that paragraph has been given.

## CHAPTER 2.B

### MEMBERSHIP

#### *Eligibility*

#### **Eligibility: general**

**2.B.1.**—(1) A person is eligible to be an active member of this Section of the scheme if conditions A to C are met and the person is not prevented by regulation 2.B.3 (restrictions on eligibility: general), 2.B.4 (concurrent employments) or 2.B.7 (restriction on further participation).

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

(3) Condition B is that the person—

- (a) enters NHS employment on or after 1st April 2008; or
- (b) entered NHS employment before that date and on that date was not an active member of the 1995 Section in that employment or any other NHS employment,

and meets any one of the other Section conditions in paragraph (5).

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

(5) The other Section conditions are that—

- (a) the person has not previously been an active member of the 1995 Section;
- (b) the person ceased to be an active member of the 1995 Section at least 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that Section;
- (c) the person ceased to be an active member of the 1995 Section less than 12 months before entering the employment mentioned in paragraph (3)(a) or (b) without becoming a pensioner member or a deferred member of that Section and has received a repayment of contributions in respect of that membership;
- (d) the person ceased to be an active member of the 1995 Section on or after 1st April 2008 on leaving NHS employment and before the person re-entered such employment—
  - (i) a transfer payment was made in respect of the person under Part M (transfer-out arrangements and buy-outs) of the 2011 Regulations; or
  - (ii) the person made an application under regulation M2 (exercising a right to a transfer or a buy-out) of the 2011 Regulations from which the person may not withdraw;
- (e) the person—
  - (i) ceased to be an active member of the 1995 Section on leaving NHS employment;
  - (ii) became a deferred member of that Section on leaving that employment and has not since become a pensioner member of that Section between the date of leaving that employment and joining this Section of the scheme; and
  - (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment;

(f) the person—

- (i) ceased to be an active member of the 1995 Section before 1st April 2008 on leaving NHS employment;
- (ii) became a deferred member of that Section on leaving that employment;

- (iii) re-entered NHS employment on or after 1st October 2008 and 5 or more years since last leaving NHS employment; and
- (iv) before the person re-entered such employment—
  - (aa) a transfer payment was made in respect of the person under Part M (transfer-out arrangements and buy-outs) of the 2011 Regulations; or
  - (bb) the person made an application under regulation M2 (exercising a right to a transfer or a buy-out) of those Regulations from which the person may not withdraw;
- (g) the person is a deferred member of the 1995 Section who has given notice for the purposes of regulation B4(1) or (2) (opting out) of the 2011 Regulations and—
  - (i) as a result of that notice has been treated as ceasing to be an active member of that Section; and
  - (ii) pursuant to that notice remains opted out of that Section for 5 years or more;
- (h) the person is a deferred member of the 1995 Section who has given notice for the purposes of regulation B4(1) or (2) (opting out) of the 2011 Regulations and following that notice, has ceased to be an active member of that Section for any one period of 5 or more years comprising the aggregate of—
  - (i) any period during which the person is not in NHS employment; and
  - (ii) any period during which the person is treated as never having been an active member of that Section in accordance with regulation B4(3) of the 2011 Regulations in respect of one or more later periods of NHS employment entered into after having given the notice for the purposes of paragraph (1) or (2) of that regulation;
- (i) the person—
  - (i) has given notice for the purposes of regulation B4 (opting out) of the 2011 Regulations and as a result of that notice all of that person's NHS employments ceased to be pensionable employment for the purposes of those Regulations;
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations; and
  - (iii) has been treated as ceasing to be in pensionable employment under the 2011 Regulations for a period of 12 months or more; or
- (j) the person—
  - (i) has given notice for the purposes of regulation B4 (opting out) of the 2011 Regulations and as a result of that notice all of that person's NHS employments ceased to be pensionable employment for the purposes of those Regulations;
  - (ii) is not entitled to a pension (including a deferred pension) under those Regulations; and
  - (iii) has, in respect of the NHS employments referred to in head (i), either received a repayment of contributions or exercised the right to a transfer payment under Part M of those Regulations,

but sub-paragraphs (d) to (f) do not apply if the Scottish Ministers have permitted such a person to rejoin the 1995 Section in the circumstances described in regulation B2(3) (age limits and restrictions on membership) of the 2011 Regulations.

(6) This regulation applies to any person who has previously been an active member of a corresponding health service scheme as though in paragraph (3) any reference to—

- (a) “the 1995 Section” includes a reference to that corresponding health service scheme; and

- (b) “NHS employment” includes a reference to—
- (i) employment with an employer in respect of whom a direction has been made under section 7 (extension of superannuation provisions of National Health Service Acts) of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(57)</sup>;
  - (ii) employment to which regulations made under section 10 of the Superannuation Act 1972<sup>(58)</sup> and having effect in England and Wales apply;
  - (iii) employment to which regulations made under article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(59)</sup> apply;
  - (iv) employment to which a scheme made under section 2 of the Superannuation Act 1984<sup>(60)</sup> (an Act of Tynwald) applies; and
  - (v) employment with an employer with whom an agreement has been made under section 235 (superannuation of officers of certain hospitals) of the 2006 Act.

**Eligibility: transitional**

- 2.B.2.**—(1) A person is eligible to be an active member of this Section of the scheme if—
- (a) the person is not prevented from being so by regulation 2.B.3 (restrictions on eligibility: general), 2.B.4 (concurrent employments) or 2.B.7 (restriction on further participation); and
  - (b) either—
    - (i) the Scottish Ministers have accepted that person’s option to join this Section of the scheme under Chapter 2.K (2008 Section Optants); or
    - (ii) that person meets all of the requirements in paragraph (2).
- (2) Subject to the following paragraphs of this regulation, the requirements are that the person—
- (a) is under age 75;
  - (b) was an active member of the 1995 Section on or after 1st April 2008;
  - (c) became a pensioner member of the 1995 Section on or before 1st October 2009;
  - (d) has either—
    - (i) returned to NHS employment since becoming a pensioner member referred to in sub-paragraph (c); or
    - (ii) commenced NHS employment for the first time; and
  - (e) is not eligible to be an active member of the 1995 Section in respect of the employment referred to in sub-paragraph (d).
- (3) A person referred to in paragraph (2) is eligible to be an active member of this Section of the scheme from the day immediately following the end of Waiting Period A, if that person is entitled to a pension under one of the following regulations of the 2011 Regulations—
- (a) E1 (normal retirement pensions);
  - (b) E3(3)(a) (lower tier ill health pension on early retirement (post 1st April 2008));

<sup>(57)</sup> 1967 c.28. Section 7 was amended by S.I. 1968/1699, section 10(5) of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), paragraph 24 of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

<sup>(58)</sup> 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649.

<sup>(59)</sup> S.I. 1972/1073 (N.I. 10).

<sup>(60)</sup> 1984 c.8 (Tynwald).

- (c) E7 (early retirement pension (redundancy etc. new starters and post-transition)); or
- (d) E11 (early retirement pension (with actuarial reduction)).

(4) A person referred to in paragraph (2) is eligible to be an active member of this Section of the scheme from the day immediately following the longer of Waiting Period A and Waiting Period B, if that person is entitled to a pension under one of the following regulations of the 2011 Regulations—

- (a) E2 (early retirement pension on ill health grounds (pre 1st April 2008)); or
- (b) E6 (early retirement pension (redundancy etc.)).

(5) If a person referred to in paragraph (2) is entitled to a pension under regulation E3(3)(b) (upper tier ill health pension on early retirement (post 1st April 2008)) of the 2011 Regulations, that person is eligible to be an active member of this Section of the scheme from the day immediately following whichever of the following occurs last—

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

(6) A person to whom paragraph (1)(b)(i) or (3)(b) applies who is entitled to a lower tier ill health pension under regulation E3(3)(a) of the 2011 Regulations, ceases to be eligible to be an active member of this Section of the scheme from the date the Scottish Ministers make a determination that the person is entitled to an upper tier ill health pension in place of that lower tier ill health pension under regulation E4(3) (re-assessment of ill health condition determined under regulation E3) of those Regulations.

(7) In this regulation—

“Waiting Period A” means a period of two calendar years beginning on the day the person becomes entitled to the pension under the 2011 Regulations; and

“Waiting Period B” means a period beginning on the day the person becomes entitled to the pension under the 2011 Regulations equal to the calendar length of—

- (a) any increase in the person’s pensionable service in the 1995 Section which has been applied in accordance with regulation E2(3) (early retirement pension on ill health grounds (pre 1st April 2008)) of the 2011 Regulations; or
- (b) any additional service with which the person has been credited in accordance with regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003<sup>(61)</sup>.

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

- (a) the “1995 Section” includes a reference to that corresponding 1995 scheme;
- (b) the “2011 Regulations” includes a reference to any regulations, orders, rules or other instruments governing that corresponding 1995 scheme;
- (c) regulations “E1”, “E2”, “E3”, “E4(3)”, “E6”, “E7”, “E7(3)(a)”, “E7(3)(b)” or “E11” includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the 2011 Regulations; and
- (d) “regulation 5 of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003” includes the equivalent of that regulation as it applies to a member of a corresponding 1995 scheme.

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(61) S.S.I. 2003/344, amended by S.S.I. 2005/445, 512 and 544, 2006/561, 2008/92 and 225 and 2011/211 and 364.

**Restrictions on eligibility: general**

**2.B.3.**—(1) A person who is entitled to the immediate payment of a pension under this Section of the scheme under a regulation that requires the person not to be in NHS employment may only be an active member in accordance with—

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

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

- (a) became a pensioner member of the 1995 Section or a corresponding 1995 scheme before 1st April 2008 (except if regulation 2.B.2(1)(b)(i) (eligibility: transitional) applies to that person);
- (b) became a pensioner member of the 1995 Section or a corresponding 1995 scheme on or after that date (except if regulation 2.B.2(1)(b)(i) or (ii) (eligibility: transitional) applies to that person); or
- (c) is a deferred member of the 1995 Section or a corresponding 1995 scheme, but is not a deferred member—
  - (i) to whom regulation 2.B.1(5)(e), (f), (g) or (h) (eligibility: general) applies; and
  - (ii) in respect of whom permission of the Scottish Ministers to rejoin the 1995 Section has not been granted pursuant to regulation B2(3) (age limits and restrictions of membership) of the 2011 Regulations.

(3) A person is not eligible to be an active member of this Section of the scheme in respect of service in an employment if the person is an active member of a superannuation scheme established under section 1 (superannuation schemes as respects civil servants, etc.) or section 9 (superannuation of teachers) of the Superannuation Act 1972<sup>(62)</sup> in respect of service in that employment.

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

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

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

(6) Subject to paragraph (7), a person is not eligible to be an active member of this Section of the scheme in any future employment if the person—

- (a) ceases to be entitled to a lower tier ill health pension under regulation 2.D.8; and
- (b) becomes entitled to an upper tier ill health pension under that regulation on the date the Scottish Ministers make a determination under regulation 2.D.9(3) (re-assessment of entitlement to an ill health pension).

(7) A person to whom paragraph (6) applies is eligible to be an active member of this Section of the scheme in any further employment after the first anniversary of that person's first day of such employment following the date of the Scottish Ministers' determination under regulation 2.D.9.

<sup>(62)</sup> 1972 c.11. Section 1 was amended by section 8 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), by paragraph 6 of Schedule 8 to the Pension Schemes Act 1993 (c.48), paragraph 14 of Schedule 8 to the Scotland Act 1998 (c.46), S.I. 2000/2040, 2001/3649 and 2007/126. Section 9 was amended by sections 4(1), 8(3) and 11 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and S.I. 2001/3649.



### *Concurrent employments*

#### **Concurrent employments**

**2.B.4.**—(1) This regulation applies if for any period a person holds two or more employments in respect of which the person is (or apart from this regulation would be) eligible to be an active member of this Section of the scheme.

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

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

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

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

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

### *Joining and leaving the scheme*

#### **Joining this Section of the scheme**

**2.B.5.**—(1) Subject to paragraph (3), a person in NHS employment who is eligible to be an active member of this Section of the scheme, becomes such a member, unless absent from work for any reason, on either—

- (a) the commencement of the person’s employment; or
- (b) where the person has previously opted out of this Section of the scheme under regulation 2.B.6(1) and is a person to whom section 3 (automatic enrolment) or section 5 (automatic re-enrolment) of the 2008 Act applies, on that person’s—
  - (i) automatic enrolment date; or
  - (ii) automatic re-enrolment date, except where the notice referred to in regulation 2.B.6(1) was given within the period of 12 months immediately preceding that date.

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

(3) A person who has previously exercised an option to opt out of this Section of the scheme in accordance with regulation 2.B.6(1) in respect of an employment in which that person was an active member, and who remains eligible to be an active member in respect of that employment, may opt

to join or re-join this Section of the scheme by giving notice in writing to the employing authority in such form as the Scottish Ministers require.

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

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

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

### **Opting out of this Section of the scheme**

**2.B.6.**—(1) A person who is an active member of this Section of the scheme in any NHS employment may opt at any time to cease to be an active member by giving notice in writing to the person's employing authority.

(2) A person who opts out under paragraph (1) ceases to be an active member of this Section of the scheme on the date the notice takes effect.

(3) The notice takes effect—

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

(4) A person to whom regulation 2.B.5(1)(a) applies in respect of an employment who gives notice in writing under paragraph (1) within one month of the date of commencing that NHS employment, is to be treated as not having become an active member by virtue of that regulation.

(5) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person's—

- (a) automatic enrolment date; or
- (b) automatic re-enrolment date, except where the notice was given within the period of 12 months immediately preceding that date.

(6) This regulation does not apply to a person to whom section 3, 5 or 8 of the 2008 Act<sup>(63)</sup> and regulation 9 or 15 of the 2010 Regulations<sup>(64)</sup> apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it) but this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.

### **Restriction on further participation in this Section of the scheme**

**2.B.7.**—(1) A person who ceases to meet conditions A, B and C in regulation 2.B.1 (eligibility: general) in an employment or is prevented by regulation 2.B.3 (restrictions on eligibility: general) or 2.B.4 (concurrent employments) from continuing to be an active member in an employment ceases to be an active member of this Section of the scheme in that employment.

<sup>(63)</sup> Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

<sup>(64)</sup> Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.

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

## CHAPTER 2.C CONTRIBUTIONS

### *Basic contributions by members*

#### **Contributions by members**

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

- (a) the member’s pensionable pay in accordance with regulation 2.C.2 (contribution rate for members other than non-GP providers) where the member is not a non-GP provider; and
- (b) the member’s pensionable earnings in accordance with regulation 2.C.4 (contribution rate and determination of pensionable earnings for non-GP providers) where the member is a non-GP provider.

(2) Member contributions must be made—

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

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

(4) In the case of a member who is a non-GP provider, the contracting Health Board or someone appointed to act on their behalf must pay to the Scottish Ministers contributions under this regulation paid to it by the non-GP provider or paid to it by another employing authority not later than the 19th day of the month following the month in which the earnings were paid to the non-GP provider.

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

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

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

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

(8) A member who is absent from service in circumstances within regulation 2.A.5(1) to (4) (pensionable service: breaks in service) may make contributions to this Section of the scheme in respect of the member’s pensionable pay or, as the case may be, pensionable earnings in accordance with that regulation and whichever of regulations 2.C.2 (contribution rate for members other than non-GP providers) or 2.C.4 (contribution rate and determination of pensionable earnings for non-GP providers) applies to that member.

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

### **Contribution rate for members other than non-GP providers**

**2.C.2.**—(1) Contributions under regulation 2.C.1(1)(a) (contributions by members) must be paid at the member's contribution rate for the scheme year in question.

(2) Where paragraph (2) of regulation 2.C.3 applies, a member's contribution rate for the scheme year 2013-2014 is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.

**Table 1: Scheme year 2013-2014**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £15,278	5.0%
£15,279 to £21,175	5.3%
£21,176 to £26,557	6.8%
£26,558 to £48,982	9.0%
£48,983 to £69,931	11.3%
£69,932 to £110,273	12.3%
£110,274 to any higher amount	13.3%

(3) Where paragraph (16), (17) or (21) of regulation 2.C.3 applies, a member's contribution rate for the scheme year 2013-2014 is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay band specified in column 1 of that table into which the member's pensionable pay falls.

**Table 2: Scheme year 2013-2014**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable pay band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5.0%
£15,432 to £21,387	5.3%
£21,388 to £26,823	6.8%
£26,824 to £49,472	9.0%
£49,473 to £70,630	11.3%
£70,631 to £111,376	12.3%
£111,377 to any higher amount	13.3%

(4) The Scottish Ministers must, with the consent of the Treasury, determine the pensionable pay bands and contribution percentage rates specified in the tables set out in this regulation in respect of each scheme year.

(5) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.

**Determination of pensionable pay for the purposes of setting a contribution rate for members other than non-GP providers**

**2.C.3.**—(1) For the purposes of this regulation—

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

(2) Subject to paragraphs (16) and (17), for the purposes of determining the relevant annual contribution rate for the current scheme year paragraphs (3) to (15) apply to a member who is in pensionable employment with the same employing authority on both the last day of the previous scheme year and the first day of the current scheme year.

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

- (a) a member is to be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to this Section of the scheme;
- (b) for the purposes of calculating the member’s pensionable pay—
  - (i) contributions for any period referred to in sub-paragraph (a) are to be deemed to have been paid; and
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 2.A.10 (pensionable pay: breaks in service) is to be included; and
- (c) the amount of pensionable pay determined in accordance with those paragraphs is to be rounded down to the nearest whole pound.

(4) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) (contribution rate for members other than non-GP providers) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay received during the previous scheme year.

(5) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by reference to the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(6) If a member—

- (a) was in pensionable employment with an employing authority on a combination of a whole-time and part-time basis throughout the previous scheme year;
- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the member's pensionable pay received during the previous scheme year in respect of the member's whole-time employment; and
- (ii) the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(7) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

(8) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

(9) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

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

(10) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

(11) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

*CWTE* is the amount the Scottish Ministers determine would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment; and

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

(12) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) (contribution rate for members other than non-GP providers) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—



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

where—

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

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

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

(13) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

(14) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

*CWTE* is the amount the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment in respect of the member's part time employment

with that employer for the period commencing on the date the member's contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year; and

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

(15) If a member—

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

the member must pay contributions during the current scheme year at the rate specified in column 2 of the table in regulation 2.C.2(2) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

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

(16) If, at any time during the current scheme year, a member commences a new employment, the member must pay contributions in respect of that employment at the rate specified in column 2 of the table in regulation 2.C.2(3) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined in accordance with paragraph (20).

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

- (a) from the first day of the pay period in which the change is made at the rate specified in column 2 of the table in regulation 2.C.2(3) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined in accordance with paragraph (20); and
- (b) as if the member's employment had commenced on that day.

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

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

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

(20) Where paragraph (16) or (17) apply the Scottish Ministers must determine the member's pensionable pay—

- (a) by applying the formula—

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

where—

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

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

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

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

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

- (a) the Scottish Ministers must determine the amount of the member's pensionable pay, and in doing so must, in addition to the matters referred to in regulation 2.C.2(5) (contribution rate for members other than non-GP providers), have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances; and
- (b) the member must pay contributions at the rate specified in column 2 of the table in regulation 2.C.2(3) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined in accordance with paragraph (a).

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

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

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

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

**2.C.4.**—(1) Member contributions payable by a non-GP provider under regulation 2.C.1(1)(b) (contributions by members) must be paid at the member's contribution rate for the scheme year in question.

(2) A member's contribution rate is the percentage specified in column 2 of the relevant table in paragraph (15) in respect of the corresponding pensionable earnings band specified in column 1 of that table into which the member's pensionable earnings falls.

(3) The Scottish Ministers must, with the consent of the Treasury, determine the pensionable earnings bands and contribution percentage rates specified in the relevant table in respect of each scheme year.

(4) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.

(5) Paragraph (6) applies where, in respect of a scheme year, a non-GP provider—

- (a) has certified their pensionable earnings in accordance with regulation 2.J.14 (employing authority and certain member record keeping and contribution estimates) and forwarded a record of those earnings to the contracting Health Board or someone appointed to act on their behalf; or
- (b) was not required to certify their earnings in accordance with that regulation but the contracting Health Board or someone appointed to act on their behalf has the figure that represents the non-GP provider's pensionable earnings for that scheme year.

(6) In the circumstances referred to in paragraph (5), contributions payable for the scheme year in question are those specified in column 2 of the relevant table in paragraph (15) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the certified or final pensionable earnings from all non-GP provider sources and any additional pensionable earnings the non-GP provider is treated as having received during a break in service in accordance with regulation 2.A.10.

(7) Subject to paragraph (8), if paragraph (5) does not apply to a non-GP provider in respect of a scheme year, that non-GP provider must pay contributions at the rate in column 2 of the relevant table in paragraph (15), on the basis of whichever of the following the contracting Health Board or someone appointed to act on their behalf considers the most appropriate in the circumstances—

- (a) an amount of the non-GP provider's earnings that has been agreed between the contracting Health Board or someone appointed to act on their behalf on the one hand and the non-GP provider on the other hand;
- (b) an amount that corresponds to that non-GP provider's most recent certified or final pensionable earnings referred to in paragraph (5); or
- (c) an amount of such earnings that corresponds to the estimate by the contracting Health Board, or someone appointed to act on their behalf, of the non-GP provider's pensionable earnings from all non-GP provider sources for that year.

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

(9) The contracting Health Board or someone appointed to act on their behalf may adjust a non-GP provider's contribution rate for any scheme year determined in accordance with paragraph (7)—

- (a) by agreement between the contracting Health Board or someone appointed to act on their behalf on the one hand and the non-GP provider on the other hand; or

- (b) without such agreement, if the contracting Health Board or someone appointed to act on their behalf is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with that paragraph.
- (10) If a member is in non-GP provider service and concurrently in practitioner service in respect of which the member is liable to pay contributions in accordance with regulation 3.C.1 (contributions by members), contributions payable in respect of the member's non-GP provider service are to be determined under this regulation whereas contributions payable in respect of the member's practitioner service are to be determined under regulation 3.C.2 (members' contribution rate).
- (11) In determining member contributions payable in accordance with this regulation, the contracting Health Board or someone appointed to act on their behalf must take account of pensionable earnings from all non-GP provider sources, including any pensionable earnings as a non-GP provider determined by another contracting Health Board.
- (12) An employing authority that is not the contracting Health Board or someone appointed to act on their behalf must, in respect of any pensionable earnings the Health Board or person appointed pays to a non-GP provider, take advice from any other relevant contracting Health Board or person appointed in determining the contributions payable in accordance with this regulation.
- (13) Where paragraph (14) does not apply, a non-GP provider must pay member contributions to the contracting Health Board or someone appointed to act on their behalf.
- (14) If a non-GP provider is engaged under a contract of employment or a contract for services by an employing authority or is a partner or shareholder in an employing authority that is not an OOH provider, that authority must—
- (a) deduct contributions under this regulation from any pensionable earnings the authority pays that person; and
  - (b) if it is not also the contracting Health Board, pay those contributions to that contracting Health Board or someone appointed to act on their behalf not later than the 7th day of the month following the month in which the earnings were paid.
- (15) In this regulation, "the relevant table" means—
- (a) in respect of the 2012-2013 scheme year, table 1; and
  - (b) in respect of the 2013-2014 scheme year, table 2.

**Table 1: Scheme year 2012-2013**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £21,175	5.0%
£21,176 to £26,557	6.5%
£26,558 to £48,982	8.0%
£48,983 to £69,931	8.9%
£69,932 to £110,273	9.9%
£110,274 to any higher amount	10.9%

**Table 2: Scheme year 2013-2014**

<i>Column 1</i>	<i>Column 2</i>
<i>Pensionable earnings band</i>	<i>Contribution percentage rate</i>
Up to £15,431	5.0%
£15,432 to £21,387	5.3%
£21,388 to £26,823	6.8%
£26,824 to £49,472	9.0%
£49,473 to £70,630	11.3%
£70,631 to £111,376	12.3%
£111,377 to any higher amount	13.3%

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

**2.C.5.**—(1) The employing authority of a member who is an active member of this Section of the scheme under this Part must contribute to the scheme, in respect of the pensionable pay or, as the case may be, pensionable earnings of that member, at the rate specified in paragraph (4) (“the employer’s standard rate”).

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

- (a) obtain the consent of the Treasury; and
- (b) take account of the advice of the scheme actuary and the cost of providing for any increase in pensions under the scheme as a result of orders made under the provisions of the Pensions (Increase) Act 1971<sup>(65)</sup> and section 59 (increase in official pensions) of the Social Security Pensions Act 1975<sup>(66)</sup>.

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

(4) The employer’s standard rate is 13.5%.

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

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

(6) Subject to paragraph (7), if a non-GP provider is—

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

<sup>(65)</sup> 1971 c.56.

<sup>(66)</sup> 1970 c.60. Section 59 was amended by section 11 of, and paragraph 20 of Schedule 3 to, the Social Security Act 1979 (c.18), paragraph 33 of Schedule 5, and Schedule 6, to the Social Security Act 1985 (c.53), section 9(8) of the Social Security Act 1986 (c.50), sections 1(7) and 5 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 34 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992 (c.6) and paragraph 9(1) of Schedule 8 to the Pensions Schemes Act 1993 (c.48).

- (b) a shareholder or partner in such an employing authority,

that employing authority must pay employer's standard rate contributions to the contracting Health Board, or someone appointed to act on their behalf, not later than the 7th day of the month following the month in which the earnings were paid.

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

(8) If regulation 2.C.4(14) (effect of payment of additional contributions) applies (but paragraph (6) does not) and the employing authority referred to in regulation 2.C.4(14)—

- (a) is not the contracting Health Board, that authority must pay employer's standard rate contributions under this regulation to the contracting Health Board or someone appointed to act on their behalf not later than the 7th day of the month following the month in which the earnings were paid; or
- (b) is the contracting Health Board, that Health Board or someone appointed to act on their behalf must pay employer's standard rate contributions under this regulation to the Scottish Ministers in respect of any pensionable earnings it pays to the non-GP provider.

(9) Not later than the 19th day of the month following the month in which pensionable pay or, as the case may be, pensionable earnings are paid to a member, the employer's standard rate contributions under this regulation must be paid to Scottish Ministers—

- (a) in the case of a member other than a non-GP provider, by that member's employing authority; and
- (b) in the case of a non-GP provider, by the contracting Health Board or someone appointed to act on their behalf.

### **Contributions by employing authorities: early retirement on termination of employment**

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

- (a) the cost of providing the pension under that regulation for the period between the member leaving the employment in which the member was an active member and reaching age 65—
  - (i) before any part of that pension is exchanged for a lump sum under regulation 2.D.14 (general option to exchange part of pension for lump sum); and
  - (ii) in the case of a 2008 Section Optant, after that pension is reduced in accordance with regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant);
- (b) the cost of providing for any increase in the rate of the benefits referred to in subparagraph (a) for that period as a result of orders made under section 59 of the Social Security Pensions Act 1975 (so far as not already met by contributions made under regulation 2.C.5(1) (contributions by employing authorities: general)); and
- (c) in the case of a 2008 Section Optant, the additional cost attributable to the early payment of the lump sum to be paid to such an Optant under regulation 2.K.12.

(2) If, on a pension under regulation 2.D.11 (early retirement on termination of employment by employing authority) becoming payable to a member in respect of the termination of the member's employment with an employing authority ("the first authority"), a pension also becomes payable

to the member in respect of pensionable service with one or more other employing authorities, the first authority must also make any additional contributions due in accordance with paragraph (1) in respect of that other pension.

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

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

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

(5) Paragraph (4)(b) does not apply where the member leaves the employment in which the member was an active member on or after 1st April 2013.

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

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

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

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

- (a) an employing authority fails to pay contributions in accordance with regulation 2.C.5 (contributions by employing authorities: general) or 2.C.6 (contributions by employing authorities: early retirement on termination of employment); and
- (b) the employing authority is—
  - (i) a GMS practice;
  - (ii) an HBPMS practice;
  - (iii) a section 17C agreement provider; or
  - (iv) an OOH provider.

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

- (a) this Part; or
- (b) the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998(67).

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

(67) S.S.I. 1998/1451, amended by S.I. 2001/3649 and S.S.I. 2001/465, 2004/62, 2005/544, 2006/307, 2008/225, 2010/22 and 369, 2011/364 and 2012/163.



*Additional contributions to purchase additional pension*

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

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

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

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

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

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

(4) The annual amount of the periodical contributions payable at the beginning of the contribution option period must be—

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

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

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

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

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

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

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

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

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

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

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

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

(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

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

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

- (a) absent from work because of illness or injury;
- (b) on maternity leave;
- (c) on adoption leave;
- (d) on paternity leave;
- (e) on parental leave; or
- (f) on a leave of absence of the kind mentioned in regulation 2.A.5(3) (pensionable service: breaks in service).

(2) If paragraph (1) applies—

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

(3) This paragraph applies if—

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

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

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

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

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

- (a) to increase by a specified amount the benefits payable to the member under Chapter 2.D (members' retirement benefits) (including if a member dies after a pension becomes payable, the benefits paid to a surviving partner and dependent children at the same rate as the member's pension for three or 6 months under Chapter 2.E (death benefits)); or
  - (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 2.E (death benefits) in respect of the member.
- (2) A member may only make a contribution under this regulation of an amount that is—
- (a) not less than the minimum amount; and
  - (b) in the case of an amount exceeding the minimum amount, a multiple of the minimum amount.
- (3) In paragraph (2) "the minimum amount" means the amount that is, in accordance with tables prepared for the Scottish Ministers by the scheme actuary, the amount of the single contribution required at the time that the option is exercised to secure an increase in the member's pension of—
- (a) £250; or
  - (b) such other amount as the Scottish Ministers may for the time being determine.
- (4) A member may exercise the option under paragraph (1) more than once.
- (5) If a member exercises an option under paragraph (1)—
- (a) the additional contribution is payable by the member to the employing authority—
    - (i) by deduction from the member's earnings or otherwise; and
    - (ii) before the end of the period of one month beginning with the day on which the member is notified by the Scottish Ministers that the option is accepted; and
  - (b) the employing authority must pay it to the Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid or, as the case may be, the authority received payment of the contribution.
- (6) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—
- (a) contributions made under regulation 2.C.8 (member's option to pay additional periodical contributions to purchase additional pension); or
  - (b) contributions made under regulation 2.C.11 (payment of additional lump sum contributions by employing authority),
- may not exceed £5000 or such other amount as the Scottish Ministers may for the time being determine taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 3.C.6 to 3.C.15 (additional contributions).
- (7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

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

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

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

- (b) to increase by a specified amount those benefits and to increase the benefits otherwise payable in respect of surviving partners and dependent children under Chapter 2.E (death benefits) in respect of the member.
- (2) An employing authority may only make a contribution under this regulation of an amount—
  - (a) that is not less than the minimum amount (as defined in regulation 2.C.10(3) (option to pay lump sum contribution); and
  - (b) in the case of an amount exceeding the minimum amount, a multiple of the minimum amount (as so defined).
- (3) An employing authority may only exercise the option under paragraph (1) with the member's consent, but may exercise it more than once in respect of the same member.
- (4) The total increase in the member's pension as a result of contributions made under this regulation, taken together with any increase as a result of—
  - (a) contributions made under regulation 2.C.8 (member's option to pay additional periodical contributions to purchase additional pension); or
  - (b) contributions made under regulation 2.C.10 (member's option to pay lump sum contribution to purchase additional pension),
 may not exceed £5000 or such other amount as the Scottish Ministers may for the time being determine (taking into account any increase in the member's pension as a result of the exercise of an option in accordance with regulations 3.C.6 to 3.C.15 (additional contributions)).
- (5) A contribution under this regulation must be paid by the employing authority to the Scottish Ministers within one month of the date on which the authority gave the Scottish Ministers notice under regulation 2.C.12(2) (exercise of options under regulations 2.C.8, 2.C.10 and 2.C.11).
- (6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

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

- 2.C.12.**—(1) A member exercising an option under regulation 2.C.8 (option to pay additional periodical contributions) or 2.C.10 (option to pay lump sum contribution) must—
- (a) do so by giving notice in writing to the employing authority, giving such information as may be required; and
  - (b) at the same time, provide the Scottish Ministers with a copy of that notice.
- (2) An employing authority exercising an option under regulation 2.C.11 (lump sum contributions by employing authority) must do so by giving notice in writing to the Scottish Ministers, giving such information as may be required.
- (3) An option under regulation 2.C.8, 2.C.10 or 2.C.11 may not be exercised during a period whilst the member is absent from work for any reason.
- (4) For the purposes of this Part—
- (a) a member is to be treated as exercising an option under regulation 2.C.8 or 2.C.10 on the date on which the employing authority receives the member's notice under paragraph (1); and
  - (b) an employing authority is to be treated as exercising an option under regulation 2.C.11 on the date on which the Scottish Ministers receive the authority's notice under paragraph (2).
- (5) The Scottish Ministers may refuse to accept an option exercised under regulation 2.C.8, 2.C.10 or 2.C.11 and must do so if not satisfied that—
- (a) the member is in good health; and

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

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

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

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

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

(4) If the Scottish Ministers cancel such an option in accordance with paragraph (3), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods.

(5) If, after the exercise of the option under regulation 2.C.8, the Scottish Ministers have reasonable grounds to believe that the member's health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.

**Effect of payment of additional contributions**

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

- (a) an option is exercised by a member under regulation 2.C.8 (option to pay additional periodical contributions) and all the contributions to be made under the option are made; or
- (b) an option is exercised by a member under regulation 2.C.10 (option to pay lump sum contribution) or by a member’s employing authority under regulation 2.C.11 (lump sum contributions by employing authority) and the lump sum payment is made<sup>(68)</sup>.

(2) Subject to paragraph (8) the member’s pension is to be increased by the full amount of the increase to be made in accordance with the terms of the option, after the final adjustment in that amount in accordance with regulation 2.C.17 (revaluation of increases bought under options).

(3) Paragraph (2) is without prejudice to any increase or reduction falling to be made in the total amount of the member’s pension under Chapter 2.D (members’ retirement benefits) or Chapter 2.K (2008 Section Optants) as a result of the member becoming entitled to payment of the pension before or after reaching age 65<sup>(69)</sup>.

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

(5) In paragraph (4), subject to regulation 2.C.15 (effect of death or early payment of pension) and regulation 2.C.16(3) (effect of part payment of periodical contributions), “the appropriate amount” means—

- (a) in the case of a pension under regulation 2.E.1 (surviving dependent adult’s pension) the amount of which is determined under regulation 2.E.3 (active members and non-contributing members) or 2.E.5 (deferred members), 37.5% of the amount of the increase mentioned in paragraph (2) that would have applied in the member’s case if the member had become entitled to the increase on the date of death (disregarding paragraph (3));
- (b) in the case of a pension under regulation 2.E.1 the amount of which is determined under regulation 2.E.4 (pensioner members), 37.5% of the amount of the increase in the member’s pension as a result of the option;
- (c) in the case of a pension under regulation 2.E.8 (surviving dependent child’s pension) the amount of which is determined under regulation 2.E.10 (active members and non-contributing members) or 2.E.12 (deferred members), the appropriate fraction (within the meaning of regulation 2.E.10 or, as the case may be, regulation 2.E.12) of 75% of the amount of the increase mentioned in paragraph (2) that would have applied in the member’s case if the member had become entitled to the increase on the date of death (disregarding paragraph (3)); and
- (d) in the case of a pension under regulation 2.E.8 (surviving dependent child’s pension) the amount of which is determined under regulation 2.E.11 (pensioner members), the appropriate fraction (within the meaning of that regulation) of 75% of the amount of the increase in the member’s pension as a result of the option.

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

(7) This regulation is subject to regulation 2.C.15 (effect of death or early payment of pension).

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

<sup>(68)</sup> For the effect of the options under regulation 2.C.8 where this regulation does not apply, see regulation 2.C.16 (effect of part payment of periodical contributions).

<sup>(69)</sup> See regulations 2.D.3 to 2.D.5 and 2.K.21.

(9) Any increase in the member's pension must be included only in a benefit payable to a surviving partner or a dependent child in respect of the member under these Regulations whilst it is being paid at the rate and for the duration of one of the periods referred to in paragraph (8).

(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

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

**2.C.15.**—(1) If a member in respect of whom an option under regulation 2.C.8 (option to pay additional periodical contributions), 2.C.10 (option to pay lump sum contribution) or 2.C.11 (lump sum contributions by employing authority) has been exercised dies before the end of the period of 12 months beginning with the date on which the option was exercised—

- (a) an amount equal to the contributions paid under the option must be paid—
  - (i) in the case of an option under regulation 2.C.8 or 2.C.10, to the member's personal representatives; and
  - (ii) in the case of an option under regulation 2.C.11, to the employing authority which made the contribution; and
- (b) regulation 2.C.14(4) (effect of payment of additional contributions) does not apply.

(2) If a member in respect of whom an option under regulation 2.C.8 has been exercised dies after the end of the period of 12 months beginning with the date on which the option was exercised and before the end of the contribution option period, regulation 2.C.14(4) applies as if all contributions due after the date of death had been made.

(3) If a member in respect of whom an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised becomes entitled to a pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) as a result of a claim made before the end of the period of 12 months beginning with the date on which the option was exercised—

- (a) regulation 2.C.14(2) and (4) does not apply; and
- (b) an amount equal to the contributions paid under the option must be paid—
  - (i) in the case of an option under regulation 2.C.8 or 2.C.10, to the member; and
  - (ii) in the case of an option under regulation 2.C.11, to the employing authority which made the contribution.

(4) Subject to regulation 2.C.13(5) and (6), if a member in respect of whom an option under regulation 2.C.8 has been exercised becomes entitled to a pension under regulation 2.D.8 before the end of the contribution option period as a result of a claim made after the end of the period of 12 months beginning with the date on which the option was exercised, regulation 2.C.14(2) and (4) applies as if all contributions under the option had been made.

(5) If a member in respect of whom an option under regulation 2.C.8, 2.C.10 or 2.C.11 has been exercised—

- (a) becomes entitled to a pension under regulation 2.D.4 (early payment of pension with actuarial reduction), 2.D.10 (early retirement on ill health: deferred members) or 2.D.11 (early retirement on termination of employment by employing authority); or
- (b) becomes entitled to a pension under regulation 2.D.5 (partial retirement: members aged at least 55) before reaching age 65,

the increase in the member's pension under Chapter 2.D (members' retirement benefits) which would otherwise be due under regulation 2.C.14(2) is reduced.

(6) The amount of the reduction is such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the increase before the member reaches 65.

(7) This regulation is subject to regulation 2.C.16 (effect of part payment of periodical contributions).

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

**2.C.16.**—(1) This regulation applies if—

- (a) the full number and amount of contributions due under an option under regulation 2.C.8 (option to pay additional periodical contributions) for the whole contribution option period are not made; and
- (b) regulation 2.C.15(1) to (4) (effect of death or early payment of pension) does not apply.

(2) The increase in the member's pension under Chapter 2.D is the appropriate proportion of the increase that would have been made under regulation 2.C.14(2) (effect of payment of additional contributions) if the full number and amount of contributions had been made (but taking account of regulation 2.C.15(5) if that applies).

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

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

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

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

(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.4.

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

**2.C.17.**—(1) Where an option under regulation 2.C.8 (option to pay additional periodical contributions), 2.C.10 (option to pay lump sum contribution) or 2.C.11 (lump sum contributions by employing authority) has been exercised, the final amount of the increase in a member's pension immediately before the beginning date for that pension must be determined in accordance with this regulation.

(2) Where the increase in pension is in respect of an option that was exercised less than two months before the increase becomes payable, the final amount is to be calculated in accordance with paragraph (4).

(3) Where the increase in pension is in respect of an option that was exercised two or more months before the increase in pension becomes payable, the final amount is to be calculated in accordance with whichever of paragraph (5) or (6) applies.

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

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Step 1 —	Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, to find the Step 1 amount.
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- Step 2 — Add to the Step 1 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971(70) on a pension of the same amount as the Step 1 amount when it first falls into payment, to find the Step 2 amount.
- Step 3 — Divide the Step 2 amount by the Step 1 amount, to find the Step 3 factor.
- Step 4 — Divide the Step 1 amount by the Step 3 factor to find the final amount referred to in paragraph (1).
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(5) If the member exercised the option on or before 31st March 2011, the calculation referred to in paragraph (3) is as follows—

- Step 1 — Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, to find the Step 1 amount.
- Step 2 — Multiply the Step 1 amount by the retail prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.
- Step 3 — Divide the Step 2 amount by the retail prices index for the month in which the option was exercised, to find the Step 3 amount.
- Step 4 — Take the greater of the Step 1 amount and the Step 3 amount, to find the Step 4 amount.
- Step 5 — Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971 on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.
- Step 6 — Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.
- Step 7 — Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).
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(6) If the member exercised the option on or after 1st April 2011, the calculation referred to in paragraph (3) is as follows—

- Step 1 — Calculate the basic amount of the increase in accordance with regulations 2.C.14 to 2.C.16, to find the Step 1 amount.
- Step 2 — Multiply the Step 1 amount by the prices index for the second month before the month in which the increase in pension will become payable, to find the Step 2 amount.
- Step 3 — Divide the Step 2 amount by the prices index for the month in which the option was exercised, to find the Step 3 amount.
- Step 4 — Take the greater of the Step 1 amount and the Step 3 amount, to find the Step 4 amount.
- Step 5 — Add to the Step 4 amount an amount that is equal to any increases that would be due under the Pensions (Increase) Act 1971(71) on a pension of the same amount as the Step 4 amount when it first falls into payment, to find the Step 5 amount.
- Step 6 — Divide the Step 5 amount by the Step 4 amount, to find the Step 6 factor.
- Step 7 — Divide the Step 4 amount by the Step 6 factor to find the final amount referred to in paragraph (1).
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(70) 1971 c.56.

(71) 1971 c.56.

(7) In this regulation—

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

“the prices index” means, as regards any month, the change in the general level of prices for that month used to determine increases to official pensions for the purposes of the Pensions (Increase) Act 1971.

### *Repayment of contributions*

#### **Repayment of contributions**

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

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

(2) This paragraph applies if—

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

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

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

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

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

(6) A person—

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

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

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

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

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

- (a) interest for the period before the transfer payment was made is calculated in accordance with this Section of the scheme making the transfer payment (subject to any provision made in any enactment applicable to the transfer); and
- (b) paragraph (7) does not apply as respects that period.

## CHAPTER 2.D

### MEMBERS' RETIREMENT BENEFITS

#### *Entitlement to pensions*

#### **Normal retirement pensions**

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

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

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

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

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

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

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

where—

*RP* is the member's reckonable pay; and

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

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

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

(7) In this Chapter “NHS employment” includes employment with an employer in respect of whom a direction has been made under section 7 (extension of superannuation provisions of National Health Service Acts) of the Superannuation (Miscellaneous Provisions) Act 1967(72).

(8) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

### **Pension credit members**

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

(2) Subject to paragraph (5), the pension becomes payable—

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

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

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

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

- (a) reached age 55; and
- (b) claimed payment of the pension.

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

- (a) is first calculated as mentioned in paragraph (3); and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches age 65.

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

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

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

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

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(72) 1967 c.28. Section 7 was amended by S.I. 1968/1699, section 10(5) of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), paragraph 24 of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

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

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

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

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.21.

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

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

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

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

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

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

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

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

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

### **Partial retirement: members aged at least 55**

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

- (a) the member has reached age 55 and—
  - (i) continues to be employed in the employment in which the member is an active member or a non-contributing member; or
  - (ii) where the member has more than one such employment, in at least one of those employments;

- (b) the member would be entitled to a pension for life, by virtue of regulation 2.D.1(1)(b)(i) (normal retirement pensions), if the member had—
    - (i) reached age 65;
    - (ii) ceased to be so employed; and
    - (iii) claimed payment of the pension;
  - (c) the terms on which the member holds the employment or employments referred to in sub-paragraph (a) change; and
  - (d) as a result of the change described in sub-paragraph (c), the annual rate of the member's pensionable pay is reduced to 90% or less of the amount of the member's pensionable pay during the period of 12 months ending with the option day.
- (2) If the member was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(d), that paragraph applies as if the member's pensionable pay during that period were—

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

where—

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

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

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

(4) The option must specify—

- (a) the percentage of the member's pension (excluding any additional pension) in respect of which the member claims immediate payment ("the specified percentage"); and
- (b) whether the member claims immediate payment of additional pension (if any).

(5) A member who duly exercises the option under this regulation is entitled—

- (a) in the case of a member who has reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.1 (normal retirement pensions) if the member had ceased to be employed on the option day (disregarding any additional pension, but subject to any increase under regulation 2.D.3 (late payment of pension with actuarial increase));
- (b) in the case of a member who has not reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.4 (early payment of pension with actuarial reduction) if the member had ceased to be employed on the option day (disregarding any additional pension); and
- (c) if the option specifies that the member claims immediate payment of additional pension, the additional pension, subject—
  - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 2.D.3 if the member had ceased to be employed on the option day; and
  - (ii) in a case within sub-paragraph (b), to a reduction of the same amount as would have been made in that pension under regulation 2.D.4 if the member had so ceased.

(6) The specified percentage must be such that—

- (a) the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) and disregarding any additional pension)—
    - (i) is not less than the amount of the pension payable by reference to 20% of the member’s pensionable service at the end of the option day (disregarding any additional pension); and
    - (ii) taken together with any such increase to which the member becomes entitled as a result of the option (before any such commutation), is not less than 0.05% of the member’s lifetime allowance on the option day;
  - (b) the percentage of the pension (other than additional pension) in respect of which the member does not require immediate payment is not less than the amount of the pension payable by reference to 20% of the member’s pensionable service at the end of the option day (disregarding any additional pension); and
  - (c) that pensionable service referred to in sub-paragraph (b) is at least one year, within the meaning of regulation 2.A.4 (meaning of “pensionable service”: part-time service) in the case of a part-time member at the end of that date.
- (7) The option under this regulation may only be exercised on no more than two occasions, and the Scottish Ministers must take advice from the scheme actuary regarding—
- (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);
  - (b) any benefits to be paid after the exercise of the second option; and
  - (c) the final payment.
- (8) In this regulation “the option day” means the day before the reduction in pensionable pay by virtue of which the option is exercisable takes effect.
- (9) For the purposes of this Part, a member who has exercised the option under this regulation—
- (a) is a pensioner member as respects the specified percentage of the pension to which the member is immediately entitled as a result of exercising the option and the percentage of the pensionable service that represents as respects which the member is an active member on the option day;
  - (b) if the member continues in pensionable service after the option day, is an active member or a non-contributing member as respects—
    - (i) the pensionable service after that day in which the member continues; and
    - (ii) so much of the pensionable service as respects which the member is an active member or a non-contributing member on the option day as does not fall within sub-paragraph (a) (“the unspecified service”); and
  - (c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.
- (10) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

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

**2.D.6.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55)—

- (a) during the period of 12 months beginning with the day after the option day, the terms on which the member holds the employment or employments referred to in regulation 2.D.5(1)(a) change again; and
- (b) either—

- (i) as a result the member's pensionable pay in that employment or those employments is increased to more than 90% of the member's pensionable pay during the period 12 months ending with the option day; or
- (ii) following an increase referred to in head (i), the member's pensionable pay in that employment or those employments is reduced to less than 90% of the member's pensionable pay during the period of 12 months ending with the option day.
- (2) In the circumstances referred to in—
- (a) paragraph (1)(b)(i), the amount of the member's pension mentioned in regulation 2.D.5(5) (a) and (b) must be abated to zero from the first pension day immediately following the day on which the level of the member's pensionable pay increased; and
- (b) paragraph (1)(b)(ii), subject to any adjustments in accordance with paragraph (3), the member is again entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a) and (b) of that regulation as from the first pension day immediately following the day on which the level of the member's engagement reduced.
- (3) Where paragraph (2)(b) applies, before restoring the payment of a pension, the Scottish Ministers must have regard to the advice of the scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with paragraph (2)(a).
- (4) If the member was not an active member or a non-contributing member during the whole of the period of 12 months mentioned in paragraph (1)(b)(i), that paragraph applies as if the member's pensionable pay during that period were—
- $$PP \times \frac{365}{N}$$
- where—
- PP* is the member's pensionable pay for the part of that period during which the member was an active member or a non-contributing member; and
- N* is the number of days in that period on which the member was an active member or a non-contributing member.
- (5) If, in the opinion of the Scottish Ministers, had the terms and conditions of the member's employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b)(i)—
- (a) paragraph (2)(a) does not apply; and
- (b) this regulation applies as if paragraph (1)(b)(i) referred to that annual rate instead of the actual annual rate.
- (6) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further employment or employments in which the member is an active member or a non-contributing member of this Section of the scheme—
- (a) that event is to be treated as if the terms on which the member holds the employment in respect of which the option was exercised ("the option employment") had changed again; and
- (b) the member's pensionable pay in the further employment is to be treated as an increase in the member's pay in the option employment.
- (7) In this regulation "the option day" has the same meaning as regulation 2.D.5(8).



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

**2.D.7.**—(1) This regulation provides for the application of regulations 2.D.5 (partial retirement: members aged at least 55) and 2.D.6 (increase in pensionable pay following exercise of option) if a person is an active member or a non-contributing member in two or more part-time employments held concurrently on the option day.

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

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

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

(i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and

(ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(4) In regulation 2.D.5(2)—

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

(b) after “that period” insert “in that employment”.

(5) For regulation 2.D.6(1)(b) substitute—

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

(i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and

(ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(6) In regulation 2.D.6(4) (increase in pensionable pay following exercise of option)—

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

(b) after “that period” insert “in that employment”.

(7) For regulation 2.D.6(5) substitute—

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

(a) paragraph (2)(a) does not apply; and

(b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.”.

(8) Where—

(a) a member’s pension is abated in accordance with regulation 2.D.6(2)(a), in the circumstances described in regulation 2.D.6(1)(b); and

(b) the member’s pensionable pay does not reduce in the manner described in regulation 2.D.6(1)(b)(ii),

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

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

### **Early retirement on ill health: active members and non-contributing members**

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

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

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

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

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

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

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

- (a) is increased by the enhancement period where the member has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member’s pensionable service before and after the break, and all such other breaks (if any), as continuous; and
- (b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if—
  - (i) the member’s pensionable service before and after the break is treated separately under regulation 2.G.2 (general rule: separate treatment of service etc.); or
  - (ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 2.K.7.

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

(7) If the member’s pensionable service includes any period which, apart from this paragraph would be calculated in accordance with regulation 2.A.4 (meaning of “pensionable service”: part-time service), the enhancement period that would apply apart from this paragraph is to be reduced by multiplying it by the fraction—

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

where—

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

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

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

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

(10) This regulation is subject to—

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

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

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

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

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

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

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member’s—
  - (i) mental capacity; and
  - (ii) physical capacity;

- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
  - (d) any other matter which the Scottish Ministers consider appropriate.
- (15) The factors to be taken into account for paragraph (13) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,
 irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
    - (i) mental capacity; and
    - (ii) physical capacity;
  - (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having due regard to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience; and
  - (e) any other matter which the Scottish Ministers consider appropriate.
- (16) The factors to be disregarded for paragraph (13) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (17) In this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Scottish Ministers consider—
- (a) would be reasonable for the member to refuse;
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a); or
    - (ii) engaging in regular employment of like duration under paragraph (3)(a), before the member reaches age 65; or
  - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;

“permanently” means—

- (a) the period until age 65; and
- (b) in the case of a 2008 Section Optant who, before joining this Section, was assessed by a medical adviser as being—
  - (i) permanently incapable of efficiently discharging the Optant’s duties for the purposes of regulation E3(2)(b)(i) (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations, that Optant must be deemed to be permanently incapable of discharging the duties of the Optant’s employment efficiently for the purposes of paragraph (2)(a); or
  - (ii) permanently incapable of regular employment of like duration for the purposes of regulation E3(2)(b)(ii) of the 2011 Regulations, that Optant must be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a); and

“regular employment of like duration” means—

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

(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 2.K.12 and 2.K.14 to 2.K.18.

(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.3.

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

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

- (a) in the opinion of the Scottish Ministers a member meets the condition in regulation 2.D.8(2)(a) (early retirement on ill health: active members and non-contributing members); and
- (b) at the time the member is awarded a pension under that regulation the Scottish Ministers give the member notice in writing that the member’s case may be considered once within a period of three years commencing with the date of that award to determine whether the member meets the condition in regulation 2.D.8(3)(a) at the date of such a consideration.

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

- (a) the member makes the application in writing—
  - (i) within three years of the date of issue of the notice; or
  - (ii) in the case of a member who engages in further NHS employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—

- (i) relating to whether the condition in regulation 2.D.8(3)(a) is satisfied at the date of the Scottish Ministers' review; and
  - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 2.D.8(2)(a);
  - (c) no previous application for a review has been made under this paragraph; and
  - (d) the member has not become entitled to an upper tier ill health pension in respect of any later service under regulation 2.G.5 (re-employed lower tier ill health pensioners).
- (3) If, after considering the further medical evidence provided by the member, the Scottish Ministers determine that the member meets the condition in regulation 2.D.8(3)(a), then as from the date on which that determination is made the member—
- (a) ceases to be entitled to a lower tier ill health pension; and
  - (b) becomes entitled to an upper tier ill health pension under regulation 2.D.8, which is to be calculated as if paragraph (8) of that regulation included the words “from the date of the Scottish Ministers' determination under regulation 2.D.9” after “continued in service”.
- (4) In the case of a 2008 Section Optant, this regulation is subject to regulations 2.K.16 and 2.K.17.

#### **Early retirement on ill health: deferred members**

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

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

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

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

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

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

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

- (6) The factors to be taken into account for paragraph (4) are—
  - (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) the member's—

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

- before the member reaches age 65; or
- (c) would, through no fault on the part of the member, not be possible for the member to receive before the member reaches age 65;
- “permanently” means the period until age 65; and
- “regular employment of like duration” means—
- (a) in the case of a member who was a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member’s pensionable service as a non-GP provider immediately before that service ceased; and
- (b) in all other cases, where prior to leaving employment that was pensionable the member was employed—
- (i) on a whole-time basis, regular employment on a whole-time basis; or
- (ii) on a part-time basis, regular employment on a part-time basis,
- regard being had to the number of hours, half-days and sessions the member worked in that employment.
- (10) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

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

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

- (a) the employment in which the member is an active member or a non-contributing member is terminated by the member’s employing authority and the member has ceased to be employed in NHS employment;
- (b) the member has two years of qualifying service;
- (c) the member’s employing authority certifies that the member—
- (i) has at least two years’ continuous employment determined in accordance with any terms and conditions applying to the employment;
- (ii) is entitled to claim a pension under this regulation if the member’s employment is terminated by reason of redundancy as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to the member in accordance with those terms and conditions; and
- (iii) has not unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
- (d) the Scottish Ministers certify that the member’s employment is terminated—
- (i) by reason of redundancy; or
- (ii) in the interests of the efficiency of the service in which the member is employed; and
- (e) the member has claimed payment of the pension.
- (2) A certificate under paragraph (1)(d)(ii) may only be given with the agreement of the employing authority.
- (3) A pension to which a member is entitled under this regulation becomes payable as soon as the member becomes entitled to it.
- (4) Subject to paragraph (6), the amount of the annual pension payable under this regulation (disregarding any additional pension) is given by the formula—



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

where—

*RP* is the member's reckonable pay; and

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

(5) A claim under paragraph (1)(e)—

(a) must be made in writing to the Scottish Ministers within 6 months of the employment terminating; and

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

(6) If—

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

(b) the terms and conditions relating to the employment require that payment to be reduced to take account of the additional contributions the employing authority must make to the Scottish Ministers in accordance with regulation 2.C.6 (contributions by employing authorities: early retirement on termination of employment); and

(c) that payment has not been so reduced,

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

(7) In paragraph (6) "related payment" means—

(a) a redundancy payment under the Employment Rights Act 1996(73); or

(b) a corresponding payment under the arrangement of the Whitley Councils for the Health Services of Great Britain.

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

(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

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

**2.D.12.**—(1) This regulation applies if—

(a) the reckonable pay of an active member who has at least two years of qualifying service is reduced; and

(b) the reduction occurs in circumstances specified in paragraph (2).

(2) The circumstances are that—

(a) the member is transferred from one employment to another;

(b) the member leaves one employment and takes up another in circumstances approved by the Scottish Ministers for the purposes of this regulation; or

(c) the member's duties change while the member continues in the same employment, otherwise than at the member's request or as a result of something done by the member.

(3) The member may opt to be treated for the purposes of this Section of the scheme—

(a) as a deferred member of this Section of the scheme as respects the earlier service; and

(b) if the member is an active member of this Section of the scheme in the later service, for the purposes of this Chapter as respects the later service as if the member became an active member for the first time on the day that service began.

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(73) 1996 c.18.

(4) Nothing in paragraph (3) prevents the member's earlier service and later service counting as a single continuous period for the purposes of regulation 2.A.6 (meaning of "qualifying service").

(5) If the member's pensionable service is to be increased under regulation 2.D.8(5)—

(a) the member's pensionable service counts as a continuous period for the purposes of calculating to what extent the pensionable service on which the pension is based should be increased; and

(b) the increase applies only in respect of the pension attributable to the later service.

(6) If a member has duly exercised the option under this regulation, the member is to be treated as mentioned in paragraph (3) (but subject to paragraphs (4) and (5)) unless paragraph (7) applies.

(7) This paragraph applies if—

(a) at the time that the member first becomes entitled to a pension under this Section of the scheme in respect of the earlier service or the later service; or

(b) if it is earlier, at the time of the member's death,

in the opinion of the Scottish Ministers the benefits payable to or in respect of the member would be more valuable if the option and any other options exercised by the member under this regulation were disregarded.

(8) The option under this regulation may only be exercised by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require before the end of the period of three months beginning with the first day of the later service.

(9) In this regulation—

"the earlier service" means—

(a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has left; and

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

"the later service" means—

(a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has begun; and

(b) in the case of a change of circumstances within paragraph (2)(c), the service in the employment after the change in the member's duties took effect.

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

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

(2) This paragraph applies if—

(a) the member is an active member or a non-contributing member in the NHS employment and that employment is employment into which the member has been transferred as a result of a transfer of an undertaking to the employing authority; and

(b) the member is a deferred member in respect of pensionable service that ceased before the member commenced the employment referred to in sub-paragraph (a)(74).

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

(74) For the effect of a pension becoming payable as a result of paragraph (2) applying, see Chapter 2.G (re-employment and rejoining the scheme) and Chapter 2.H (abatements).

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

(5) This paragraph applies if—

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

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

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

**2.D.14.**—(1) A member (other than a pension credit member whose rights under the scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.

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

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

(4) In paragraphs (2) and (3) “annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Chapter apart from the option, together with any increases payable under the Pensions (Increase) Act 1971(75), calculated as at the time payment would first be due.

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

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

(7) Subject to paragraphs (8) and (9), the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require—

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

(8) If the pension is an ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members), the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in such form as the Scottish Ministers require—

- (a) where the member is awarded—
  - (i) a lower tier ill health pension under paragraph (2) of that regulation, at the time of claiming that lower tier ill health pension;

- (ii) an upper tier ill health pension under paragraph (3) of that regulation, at the time of claiming that upper tier ill health pension; or
  - (b) before such later time as the Scottish Ministers specify in writing.
- (9) If the pension is an upper tier ill health pension under regulation 2.D.9 (re-assessment of entitlement to an ill health pension), in substitution for a lower tier ill health pension under regulation 2.D.8, the option under this regulation may only be exercised—
- (a) in relation to the difference between the lower tier ill health pension that ceases to be payable in accordance with regulation 2.D.9(3) and the upper tier ill health pension to which the member becomes entitled under that paragraph; and
  - (b) by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require—
    - (i) at the time of award of the upper tier ill health pension under that paragraph; or
    - (ii) before such later time as the Scottish Ministers specify in writing.
- (10) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.8(4) (pension debit members) and regulation 2.K.12 (amount of pension and lump sum to be paid).

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

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

(2) In paragraph (1), “relevant pension” means a pension payable to that member under regulation—

- (a) 2.D.1 (normal retirement pensions);
- (b) 2.D.2 (pension credit members);
- (c) 2.D.8 (early retirement on ill health: active members and non-contributing members); or
- (d) 2.D.10 (early retirement on ill health: deferred members).

(3) The option may only be exercised—

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

(4) An active member or a non-contributing member aged 65 or over who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

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

(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable, an amount equal to the sum of—

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

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

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time; and
- (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.8 after exercising that option, multiplied by 5.

(7) A deferred member entitled to a pension under regulation 2.D.10 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 2.D.14 at the appropriate time; and
- (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.10 after exercising that option, multiplied by 5.

(8) In this regulation “the appropriate time” means—

- (a) for the purposes of paragraphs (4) and (5) the time when the option under this regulation is exercised; and
- (b) for the purposes of paragraphs (6) and (7) the time payment of the pension under regulation 2.D.8 or, as the case may be, regulation 2.D.10 would otherwise first be due.

(9) In this regulation references to the “annual amount” of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act 1971<sup>(76)</sup>, calculated as at the appropriate time.

(10) The option under this regulation may only be exercised by notice in writing to the Scottish Ministers in such form as the Scottish Ministers require.

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

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

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

(2) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.8(2).

#### *Allocation*

### **Election to allocate pension**

**2.D.17.**—(1) A member may elect to allocate a part of the annual amount of the member’s pension under this Section of the scheme for the provision of a pension after the member’s death to a single person who is the member’s spouse or civil partner or another person who is the member’s dependant within the meaning of paragraph 15 of Schedule 28 (registered pension schemes: authorised pensions - supplementary) to the 2004 Act if conditions A and B are met.

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

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(76) 1971 c.56.

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

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

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

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

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

- (a) the allocated annual pension exceeding the member's unallocated relevant annual pension;
- (b) the allocated pension exceeding such amount as the Scottish Ministers may determine for the purposes of this paragraph, after consultation with the scheme actuary, having regard to any restrictions imposed under Part 4 (pension schemes etc.) of the 2004 Act; or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 2.J.6 (commutation of small pensions) by way of commutation of a pension of that amount if the person entitled to the pension was not entitled to any other benefits under this Section of the scheme.

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

(8) If a member—

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

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

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

### **Procedure for election under regulation 2.D.17**

**2.D.18.**—(1) An election under regulation 2.D.17 (election to allocate pension) in respect of a member's pension must be made—

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

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

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

(4) Subject to paragraphs (6) and (7), an election under regulation 2.D.17 takes effect when it is accepted by the Scottish Ministers.

(5) The election may not be withdrawn, amended or revoked after it has taken effect.

(6) The election does not take effect if—

- (a) the member or the person in whose favour the election was made (“the beneficiary”) dies on or before the day on which the Scottish Ministers accept it; or
- (b) the Scottish Ministers are not satisfied that at the time when the election is made the member is in good health.

(7) The election is to be treated as not having taken effect if the beneficiary dies before the member is notified in writing that the Scottish Ministers have accepted the election.

### **Effect of allocation**

**2.D.19.**—(1) If an election under regulation 2.D.17 (election to allocate pension) for the allocation of a member’s pension to another person (“the beneficiary”) has taken effect—

- (a) the member’s pension is to be reduced accordingly (even if the beneficiary predeceases the member); and
- (b) if the beneficiary survives the member, on the member’s death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 2.D.17.

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

- (a) the member’s spouse or civil partner on the date when the member becomes entitled to the pension or dies; nor
- (b) a dependant of the member for the purposes of paragraph 15(2) or (3) (meaning of “dependant”) of Schedule 28 to the 2004 Act when the member dies.

(3) References in this Part to pensions under this Chapter do not include pensions under this regulation except where the context otherwise requires.

(4) Any such pension is payable in addition to any pension payable to the beneficiary in respect of the member’s death under Chapter 2.E (death benefits).

### *Dual capacity membership*

### **Dual capacity membership**

**2.D.20.**—(1) This paragraph applies if a member is—

- (a) a member of this Section of the scheme of two or more of the kinds specified in paragraph (2);
- (b) a pensioner member in respect of two or more pensions; or
- (c) a deferred member in respect of two or more pensions.

(2) The kinds of member are—

- (a) an active member or a non-contributing member;
- (b) a deferred member;
- (c) a pensioner member; and
- (d) a pension credit member.

(3) If paragraph (1) applies, the general rule is that—

- (a) benefits are payable to the member under this Chapter (or to any person to whom the member has opted to allocate pension under regulation 2.D.17 (election to allocate pension)) as if the member were two or more members of the kinds in question (so that two or more pensions or lump sums are payable in respect of the one member); and

- (b) the amounts payable are to be determined accordingly.
- (4) The rule in paragraph (3) is subject to any indication to the contrary and, in particular, does not affect the interpretation of—
  - (a) regulation 2.A.3(3) (meaning of “pensionable service”);
  - (b) regulation 2.D.5(9) (partial retirement: members aged at least 55) in a case where a member is both an active member or a non-contributing member and a pensioner member by virtue of that regulation;
  - (c) regulation 2.D.12 (option to have periods of service treated separately where pay is reduced);
  - (d) regulation 2.G.3 (exception to general rule);
  - (e) regulation 2.G.4 (effect of re-employment on upper tier ill health pensions);
  - (f) regulation 2.G.5 (re-employed lower tier ill health pensioners);
  - (g) regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking); or
  - (h) Chapter 2.H (abatement).
- (5) If a person who is a pension credit member is entitled to two or more pension credits—
  - (a) benefits are payable to the person under this Section of the scheme (or to any person to whom the member has opted to allocate pension under regulation 2.D.17) as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable to the one pension credit member); and
  - (b) the amounts of those benefits are to be determined accordingly.

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

**Guaranteed minimum pensions etc.**

- 2.D.21.**—(1) If a member has a guaranteed minimum under section 14 (earner’s guaranteed minimum) of the 1993 Act in relation to benefits under this Section of the scheme—
- (a) nothing in this Part permits or requires anything that would cause requirements made by or under the 1993 Act in relation to such a member and such a member’s rights under this Section of the scheme not to be met in the case of the member;
  - (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member; and
  - (c) the following provisions are without prejudice to the generality of this paragraph.
- (2) If apart from this rule—
- (a) no pension would be payable to the member under this Section of the scheme; or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,
- a pension at a weekly rate equal to the guaranteed minimum is payable to the member for life from the date on which the member reaches State pension age or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.
- (3) Subject to paragraph (4)—
- (a) if on reaching State pension age the member is still in employment (whether or not it is scheme employment); and
  - (b) if it is not scheme employment, the member consents to a postponement of the member’s entitlement under paragraph (2),



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

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

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

(6) If—

(a) before State pension age the member becomes entitled to the immediate payment of a pension; and

(b) the member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of the 1993 Act in relation to the whole or part of the pension,

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

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

(a) all the person's rights to benefits under this Section of the scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 9(2B) of the 1993 Act ("the person's contracting-out rights"), have been transferred under Chapter 2.F (transfers); or

(b) the person has no rights to benefits under this Section of the scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies—

(a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to the person's guaranteed minimum, if any; and

(b) from the date on which the person reaches pension age the person is entitled to a pension in respect of the person's rights under section 9(2B) of the 1993 Act,

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

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

(a) a pension that is forfeited—

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

(ii) in a case where an offence within regulation 2.J.8(2)(b) (forfeiture of rights to benefits) is committed;

(b) a pension that is commuted under regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum); or

(c) a pension that is commuted under regulation 2.J.6 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(77) are met,

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(77) S.S.I. 1996/1172. Regulation 60 was amended by S.I. 2006/744 and 1337 and 2010/449.

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

(10) For the purposes of this regulation—

- (a) “scheme employment”, in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of this Section of the scheme; and
- (b) references to the amount of a pension are to its amount—
  - (i) disregarding any additional pension;
  - (ii) after the subtraction of any amount exchanged under regulation 2.D.14 (general option to exchange part of pension for lump sum); and
  - (iii) before the subtraction of any amount allocated under regulation 2.D.17 (election to allocate pension).

## CHAPTER 2.E

### DEATH BENEFITS

#### *Pensions for surviving dependent adults*

#### **Surviving dependent adult’s pension**

**2.E.1.**—(1) If an active member, a non-contributing member, a deferred member or a pensioner member dies leaving a surviving adult dependant, the surviving adult dependant is entitled to a pension that is payable for life<sup>(78)</sup>.

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

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

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

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

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

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

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<sup>(78)</sup> For the rate at which the pension referred to in paragraph (1) is payable see regulations 2.E.3 to 2.E.7 (amount of surviving adult’s pension) and, in any case where that pension includes additional pension, regulations 2.C.14(4) (effect of payment of additional contributions) and 2.C.16(3) (effect of part payment of periodical contributions).

- (3) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.20.
- (4) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2.

**Amount of surviving adult's pension: active members and non-contributing members**

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

- (a) in the case of a deceased active member, the rate of the member's pensionable pay at the time of death;
- (b) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.

(2) Subject to paragraphs (3) and (7), after the initial period, if the member dies with two or more years of qualifying service, the annual amount of the pension payable under regulation 2.E.1—

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

(3) Subject to paragraph (7), after the initial period, if the member dies with less than two years of qualifying service but after reaching age 65, the annual amount of the pension payable under regulation 2.E.1 is equal to 37.5% of the pension to which the member would have been entitled (disregarding any additional pension) if on the date of death the member had become entitled to a pension under regulation 2.D.1 (normal retirement pensions in respect of any period of pensionable service that the member is entitled to count.

(4) After the initial period, if—

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

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

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

(6) This regulation is subject to regulation 2.E.7 (amount of surviving adult's pension: re-employed pensioners).

(7) For the purposes of paragraphs (2)(b) and (3), no account is to be taken of any increase under—

- (a) regulation 2.D.3 (late payment of pension with actuarial increase); or
- (b) regulation 2.K.21.

**Amount of surviving adult's pension: pensioner members**

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

- (a) the amount of the pension payable to the surviving adult dependant under this Chapter apart from this paragraph; and
- (b) the amount of the children's pensions otherwise payable under this Part.

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

(3) For the purposes of paragraph (1), any reduction in the rate of the member's pension under—

- (a) Chapter 2.H (abatement);
- (b) regulation 2.D.14 (general option to exchange part of pension for lump sum); or
- (c) regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant),

is to be ignored.

(4) For the purposes of paragraph (2)—

- (a) any reduction in the rate of the member's pension under—
  - (i) regulation 2.D.4 (early payment of pension with actuarial reduction);
  - (ii) regulation 2.D.14; or
  - (iii) regulation 2.K.12; and
- (b) any increase in the rate of the member's pension under—
  - (i) regulation 2.D.3 (late payment of pension with actuarial increase); or
  - (ii) regulation 2.K.21,

is to be ignored.

(5) In this regulation “the initial period” means—

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

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

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

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

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

(8) This regulation is subject to regulation 2.E.7 (amount of surviving adult's pension: re-employed pensioners).

### **Amount of surviving adult's pension: deferred members**

**2.E.5.**—(1) In the case of a deferred member—

- (a) who left pensionable service less than 12 months before the date of death; and
- (b) whose surviving adult dependant would have been the member's surviving adult dependant if the member had died on the member's last day of pensionable service,

the rate of the pension payable under regulation 2.E.1 (surviving dependent adult's pension) is equal to 37.5% of the upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) to which the member would have been entitled if on the date the member's pensionable service ceased the member had become entitled to such a pension under regulation 2.D.8 (but disregarding any additional pension).

(2) In the case of any other deferred member whose surviving adult dependant would have been the member's surviving adult dependant if the member had died on the member's last day of pensionable service, the rate of the pension payable under regulation 2.E.1 is equal to 37.5% of the pension under regulation 2.D.1 (normal retirement pensions) in respect of any period of pensionable service to which the member would have been entitled if on the date of death the member had become entitled to such a pension.

### **Amount of surviving adult's pension: recent leavers**

**2.E.6.**—(1) If—

- (a) a recent leaver dies leaving a surviving spouse or civil partner who has a guaranteed minimum under section 17 (minimum pensions for widows and widowers) of the 1993 Act in relation to benefits in respect of the recent leaver under this Section of the scheme; and
- (b) the recent leaver has died before reaching age 65,

the surviving spouse or civil partner is entitled to a pension that is payable for life of an amount equal to that person's guaranteed minimum pension (disregarding any additional pension), unless paragraph (2) applies.

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

(3) In this Part "recent leaver" means a person—

- (a) who left pensionable service less than 12 months before the date of death;
- (b) who is not a deferred member or a pensioner member because of rights resulting from that employment; and
- (c) in respect of whom no transfer value or refund of contributions has been paid in respect of that employment.

### **Amount of surviving adult's pension: re-employed pensioners**

**2.E.7.**—(1) This regulation applies if, apart from this regulation, both regulations 2.E.3(1) (active members and non-contributing members) and 2.E.4(1) (pensioner members) would apply on the death of a member.

(2) Where this regulation applies, the rate of pension payable by virtue of regulations 2.E.3(1) and 2.E.4(1) during the initial period (as defined in the respective regulations) is instead the rate provided in paragraph (3).

(3) Subject to paragraph (4), for the relevant initial period the rate of the pension payable under regulation 2.E.1 (surviving dependent adult's pension) is equal to the sum of—

- (a) in the case of—
  - (i) a deceased active member, the rate of the deceased’s pensionable pay at the time of death; and
  - (ii) a deceased non-contributing member, the rate of the deceased’s reckonable pay on the member’s last day of pensionable service; and
- (b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under Chapter 2.H (abatement).
- (4) Paragraph (3)(a) does not apply if—
  - (a) the rate of the pension payable to the surviving adult in respect of later service; and
  - (b) any children’s pension that would otherwise be payable in respect of later service under this Part,
 would be greater.

*Pensions for surviving dependent children*

**Surviving dependent child’s pension**

- 2.E.8.**—(1) If a member or a recent leaver dies leaving one or more dependent children, a pension is payable in respect of them<sup>(79)</sup>.
- (2) This is subject to paragraphs (7) to (9).
  - (3) If a dependent child ceases to be a dependent child after the date of death, the pension ceases to be payable in respect of that child.
  - (4) If a dependent child is born after the date of death, the same pension is payable in respect of the child as if the child had been born on the date of death.
  - (5) If a member or a recent leaver dies leaving two or more dependent children, they are entitled to such shares of the pension as the Scottish Ministers may from time to time decide.
  - (6) An amount payable under this regulation in respect of a dependent child is payable to the dependent child or, if the Scottish Ministers so decide, to another person for the dependent child’s benefit.
  - (7) No pension is payable in respect of any dependent children who on the deceased’s death are dependent on an adult who is entitled to a surviving adult’s pension whilst that pension is payable at the rate mentioned in regulation 2.E.4(1) (pensioner members) or 2.E.7(3)(b) (re-employed pensioners), except so much of that pension as is additional pension.
  - (8) If a dependent child is incapable of earning a living because of physical or mental infirmity for any period and the child is maintained out of money provided by Parliament in a hospital or other institution for a period exceeding one month, no pension is payable in respect of the child for any part of that period after the first month.
  - (9) If, apart from this paragraph, a pension would be payable in respect of any person as a dependent child of three or more persons who were deceased members or recent leavers—
    - (a) a pension is only payable in respect of two of them; and
    - (b) the amount payable is equal to the sum of the two highest pensions.

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<sup>(79)</sup> For the rate at which the pension referred to in paragraph (1) is payable, see regulations 2.E.10 to 2.E.15 (amount of surviving child’s pension) and, in any case where that pension includes additional pension, regulations 2.C.14(4) (effect of payment of additional contributions) and 2.C.16(3) (effect of part payment of periodical contributions).

### **Meaning of “dependent child”**

**2.E.9.**—(1) In this Part “dependent child”, in relation to a deceased member or recent leaver, means a person who—

- (a) meets the relationship condition in paragraph (2);
  - (b) either—
    - (i) has not reached age 23; or
    - (ii) in the opinion of the scheme administrator was financially dependent on the deceased at the date of death because of physical or mental infirmity and remains so;
  - (c) was born—
    - (i) before the deceased ceased to be an active member; or
    - (ii) within one year after the deceased ceased to be an active member;
  - (d) in the case of a person within sub-paragraph (c)(i), was dependent on the deceased—
    - (i) at the date of death; and
    - (ii) if the deceased died after ceasing to be an active member, when the deceased ceased to be an active member; and
  - (e) in the case of a person within sub-paragraph (c)(ii)—
    - (i) was dependent on the deceased both at birth and at the deceased’s death; or
    - (ii) if the person was born after the deceased’s death, would have been dependent on the deceased had the deceased not died before the person’s birth.
- (2) A person meets the relationship condition if the person is—
- (a) a natural child or natural grandchild of the deceased;
  - (b) an adopted child of the deceased who was adopted whilst the deceased was an active member;
  - (c) a step-child of the deceased whose natural or adoptive parent is the deceased’s surviving spouse or civil partner from a marriage entered into, or a civil partnership formed, whilst the deceased was an active member;
  - (d) in a case where the deceased left a surviving nominated partner with whom the deceased was living as mentioned in regulation 2.E.2(1)(b)(i) (meaning of “surviving nominated partner”) when the deceased ceased to be an active member, a person whose natural or adoptive parent is the deceased’s surviving nominated partner;
  - (e) a brother or sister, or a child of a brother or sister, of the member or the member’s spouse or civil partner or nominated partner;
  - (f) a half-brother or half-sister, or a child of a half-brother or half-sister, of the member or the member’s spouse or civil partner or nominated partner;
  - (g) a person whom, in the opinion of the scheme administrator, the deceased intended when the deceased ceased to be an active member to adopt; or
  - (h) a person who had been dependent on the deceased for at least two years or (if less) at least half the person’s life when the deceased ceased to be an active member.

### **Amount of surviving child’s pension: active members and non-contributing members**

**2.E.10.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving dependent child’s pension) if at the date of death the deceased was an active member or a non-contributing member of this Section of the scheme who was not also a pensioner member.

(2) Subject to paragraphs (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation “the basic death pension” means—

$$0.75 \times \frac{RP}{60} \times \frac{LRS}{365}$$

where—

*RP* is the deceased’s reckonable pay; and

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

(4) For this purpose “relevant service” means—

(a) in the case of an active member, the greater of—

- (i) the pensionable service the deceased was entitled to count on the date of death, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) (early retirement on ill health: active members and non-contributing members) if the deceased had become entitled to an upper tier ill health pension on the date of death; and
- (ii) 10 years’ pensionable service;

(b) in the case of a non-contributing member, the pensionable service that the deceased was entitled to count on the date of death,

and, in the case of a 2008 Section Optant, this is subject to regulation 2.K.24 (children’s pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations) and, in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5 (children’s pensions payable on the death).

(5) In this regulation “the appropriate fraction” means—

(a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant’s pension is payable under regulation 2.E.1—

- (i) one-quarter if there is only one dependent child; and
- (ii) one-half if there are two or more dependent children;

(b) if there is a such a parent or spouse or civil partner of a parent, but no surviving adult dependant’s pension is payable under regulation 2.E.1—

- (i) one-third if there is only one dependent child; and
- (ii) two-thirds if there are two or more dependent children; and

(c) if there is no such parent or spouse or civil partner of such a parent—

- (i) one-third if there is only one dependent child; and
- (ii) two-thirds if there are two or more dependent children.

(6) If—

(a) a surviving adult dependant’s pension is payable under regulation 2.E.1; and

(b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension payable in respect of that child for the first three months after the deceased’s death is equal to—

(i) in the case of a deceased active member, the rate of the deceased’s pensionable pay at the date of death; and

(ii) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.



(7) In a case within paragraph (5)(b) or (c), the rate of pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to—

- (a) in the case of a deceased active member, the rate of the deceased's pensionable pay at the date of death; and
- (b) in the case of a deceased non-contributing member, the rate of the deceased's reckonable pay.

**Amount of surviving child's pension: pensioner members**

**2.E.11.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving dependent child's pension) if at the date of death the deceased was a pensioner member of this Section of the scheme who was not also an active member or a non-contributing member.

(2) Subject to paragraphs (5), (6) and (7), that amount is the appropriate fraction of the basic death pension.

(3) In this regulation, "the basic death pension" means the greater of—

- (a) 75% of the deceased's annual pension (disregarding any additional pension); and
- (b) 75% of the annual pension to which the deceased would have been entitled if the deceased had been entitled to count 10 years' pensionable service (disregarding any additional pension),

and, in the case of a 2008 Section Optant, this is subject to regulation 2.K.24 (children's pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations) and, in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5 (children's pensions payable on the death).

(4) In this regulation "the appropriate fraction" means—

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult dependant's pension is payable under regulation 2.E.1—
  - (i) one-quarter if there is only one dependent child; and
  - (ii) one-half if there are two or more dependent children;
- (b) if there is such a parent or spouse or civil partner of a parent, but no surviving adult dependant's pension is payable under regulation 2.E.1—
  - (i) one-third if there is only one dependent child; and
  - (ii) two-thirds if there are two or more dependent children; and
- (c) if there is no such parent or spouse or civil partner of a parent—
  - (i) one-third if there is only one dependent child; and
  - (ii) two-thirds if there are two or more dependent children.

(5) If—

- (a) a surviving adult dependant's pension is payable under regulation 2.E.1; and
- (b) there is a dependent child who is not dependent on the person entitled to that pension,

the rate of the pension in respect of that child for the first three months after the deceased's death is equal to the rate of the member's pension at the date of death (disregarding any additional pension).

(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the greater of—

- (a) the rate of the member's pension at the date of death disregarding any reduction made under Chapter 2.H (abatement) and any additional pension; and
- (b) the amount of children's pension that would otherwise be payable under these Regulations.

(7) If the deceased member's pension was payable under regulation 2.D.4 (early payment of pension with actuarial reduction), the reference in paragraph (3)(a) and (b) to the member's pension is a reference to the amount that the member's pension would have been if it had been calculated without the reduction mentioned in paragraph (2)(b) of that regulation.

(8) For the purposes of paragraphs (1) and (2), any reduction in the member's pension under regulation 2.D.14 (general option to exchange part pension for lump sum) and regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant) is to be ignored.

### **Amount of surviving child's pension: deferred members**

**2.E.12.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving dependent child's pension) if at the date of death the deceased was a deferred member of this Section of the scheme who was not also an active member, a non-contributing member or a pensioner member.

- (2) That amount is the appropriate fraction of the basic death pension.
- (3) In this regulation, "the basic death pension" means—
  - (a) if the deceased 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 2.E.10 (amount of surviving child's pension: active members and non-contributing members) if the deceased had died on the day of so ceasing (disregarding any additional pension); and
  - (b) otherwise, the greater of—
    - (i) 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 2.D.1 (normal retirement pensions) on the date of death (disregarding any additional pension); and
    - (ii) 75% of the pension to which the deceased would have been entitled if the deceased had become so entitled and the pension had been calculated on the assumption that the member was entitled to 10 years' pensionable service (disregarding any additional pension),

and, in the case of a 2008 Section Optant, this is subject to regulation 2.K.24 (children's pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations) and, in the case of a Waiting Period Joiner, this is subject to regulation 2.L.5 (children's pensions payable on the death).

- (4) In this regulation "the appropriate fraction" means—
  - (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult's pension is payable—
    - (i) one-quarter if there is only one dependent child; and
    - (ii) one-half if there are two or more dependent children; and
  - (b) otherwise—
    - (i) one-third if there is only one dependent child; and
    - (ii) two-thirds if there are two or more dependent children.

### **Amount of surviving child's pension: recent leavers**

**2.E.13.**—(1) This regulation applies for determining the annual amount of the pension payable under regulation 2.E.8(1) (surviving dependent child's pension) if at the date of death the deceased was a recent leaver (within the meaning of regulation 2.E.6(3) (recent leavers)).

(2) That amount is the appropriate fraction of the basic death pension.

(3) In this regulation—

“the basic death pension” means 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to—

- (a) a pension under regulation 2.D.8(5) (early retirement on ill health: active members and non-contributing members) on the date of death; or
- (b) if greater, the amount that the member's pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension); and

“the appropriate fraction” means—

- (a) if there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children and a surviving adult's pension is payable—
  - (i) one-quarter if there is only one dependent child; and
  - (ii) one-half if there are two or more dependent children; and
- (b) otherwise—
  - (i) one-third if there is only one dependent child; and
  - (ii) two-thirds if there are two or more dependent children.

### **Amount of surviving child's pension: re-employed pensioners**

**2.E.14.**—(1) This regulation applies for determining the annual amount of a pension payable under regulation 2.E.8(1) (surviving dependent child's pension) if at the date of death the deceased was an active member or a non-contributing member who was also a pensioner member of this Section of the scheme.

(2) If there is no surviving adult dependant, the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased's death is equal to the sum of—

- (a) in the case of—
  - (i) a deceased active member, the rate of the deceased's pensionable pay at the date of death; and
  - (ii) a deceased non-contributing member, the rate of the deceased's reckonable pay; and
- (b) the rate of the pension being received by the deceased at the date of death (after taking account of any abatement under Chapter 2.H).

(3) Subject to paragraph (5), except where a pension is payable at the rate mentioned in paragraph (2), the pension in respect of the member's later service must be paid as the appropriate fraction of 75% of the rate of pension described in—

- (a) regulation 2.D.8(5) (early retirement on ill health: active members and non-contributing members) if the deceased has not reached age 65 on the date of death; or
- (b) regulation 2.D.1 (normal retirement pensions) if the deceased has reached age 65 on the date of death.

(4) In this regulation “appropriate fraction” has the meaning given in regulation 2.E.10(5) (amount of surviving child’s pension: active members and non-contributing members).

(5) If any dependent child was a dependent child both at the time when the pensionable service in respect of which the pension is payable ceased and at the date of death, the annual amount of the pension in respect of the dependent child or children is the sum of—

- (a) the annual amount that would be payable in respect of the child under regulation 2.E.10 (active members and non-contributing members) as a result of the member dying whilst an active member or a non-contributing member if that regulation applied to members who are also pensioner members (disregarding the pensionable service in respect of which the pension is payable (“the pension service”) and any additional pension); and
  - (b) the annual amount that would be payable in respect of the child under regulation 2.E.11 (amount of surviving child’s pension: pensioner members) as a result of the member dying whilst a pensioner member if that regulation applied to members who are also active members or non-contributing members (having regard only to the pension service and disregarding any additional pension).
- (6) If, apart from this paragraph, the sum of—
- (a) the relevant service (as defined in regulation 2.E.10(4)) for the purposes of the calculation of the annual amount referred to in paragraph (5)(a); and
  - (b) the pension service,

would be less than 10 years’ pensionable service, the deceased’s relevant service for the purposes of that calculation is increased by the length of the shortfall.

#### **Amount of surviving child’s pension: power to increase**

**2.E.15.**—(1) This regulation applies if—

- (a) a member dies leaving a dependent child or children;
- (b) there is a surviving parent of the dependent child or children or a surviving spouse or civil partner of a parent of the dependent child or children; and
- (c) the dependent child or children are not being maintained by that surviving parent, spouse or civil partner.

(2) The Scottish Ministers may increase the amount of the pension that would otherwise be payable under this Chapter in respect of the dependent child or children.

(3) The increased amount may not exceed the amount that would have been payable under this Chapter if there had been no such surviving parent or spouse or civil partner of a parent.

#### *Lump sum death benefits*

#### **Lump sum benefits on death: introduction**

**2.E.16.**—(1) A lump sum is payable in accordance with this Chapter if—

- (a) a member, a recent leaver or a deferred member dies before reaching age 75; or
- (b) a pensioner member, on or after reaching age 75, dies except in the circumstances described in regulation 2.E.21 (pension payable when member dies on or after reaching age 75).

(2) Paragraph (1) is subject to the following provisions of this Chapter.

(3) This regulation does not apply if—

- (a) the member is—

- (i) a pensioner member; or
  - (ii) a pension credit member who dies after any benefits attributable to the pension credit have become payable; and
- (b) the death takes place more than 5 years after the member's pension becomes payable.

**Amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)**

**2.E.17.**—(1) The lump sum payable on the death of an active member or a non-contributing member, who is not also a deferred member or a pensioner member, is an amount equal to twice the member's reckonable pay and, in the case of a 2008 Section Optant, this is subject to regulation 2.K.23 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations) and, in the case of a Waiting Period Joiner, this is subject to regulation 2.L.4 (lump sum payable on death).

(2) Subject to regulations 2.E.21 (pension payable when member dies on or after reaching age 75) and 2.E.22 (payment of lump sums or pensions on death), the lump sum payable on the death of a pensioner member, who is not also an active member, a non-contributing member or a deferred member, is, in respect of each pension to which the member is entitled, the lesser of—

- (a) an amount equal to 5 times the annual rate of the pension (other than any additional pension), less the amount of the pension payments already made to the member; and
- (b) an amount equal to twice the member's reckonable pay by reference to which the pension was calculated, less the aggregate of—
  - (i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum); and
  - (ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant).

(3) The lump sum payable on the death of a deferred member, who was not an active member, a non-contributing member or a pensioner member, is an amount equal to the member's deferred annual pension, multiplied by 2.25.

(4) The lump sum payable on the death of a recent leaver is an amount equal to the deferred annual pension to which the person would have been entitled if the person were entitled to such a pension calculated by reference to the pensionable service the recent leaver was entitled to count in the service that has ceased, multiplied by 2.25.

(5) In this regulation, references to a member's deferred annual pension are to the annual pension, in respect of any period of pensionable service, to which the member would have been entitled under regulation 2.D.1 (normal retirement pensions) if on the date of death the member had become entitled to such a pension (other than any additional pension).

(6) The reference in paragraph (2)(a) to the annual rate of the member's pension is to the member's pension after it has been reduced to take account of—

- (a) the exercise by the member of an option under regulation 2.D.14; and
- (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 2.K.12 (amount of pension and lump sum to be paid).

(7) If a pensioner member exercised the option under regulation 2.D.17 (election to allocate pension), the reference in paragraph (2)(a) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.

- (8) For the purposes of this regulation, the fact that a person—
- (a) was an active member or a non-contributing member in service in an employment in respect of which the member has exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55);
  - (b) is a deferred member as a result of service in an employment in respect of which the member has exercised that option; or
  - (c) is a pensioner member by virtue of being entitled to a pension under that regulation,
- is ignored.

**Amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments)**

**2.E.18.**—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) was an active member or a non-contributing member otherwise than in service in an employment in respect of which the member had exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55); and
- (b) was also a pensioner member.

(2) Subject to paragraph (4), the lump sum is an amount equal to the sum of—

- (a) 5 times the annual rate of pension—
  - (i) payable under regulation 2.D.8(5) (early retirement on ill health: active members and non-contributing members), if the deceased had not reached age 65; or
  - (ii) payable under regulation 2.D.1 (normal retirement pensions), if the deceased had reached age 65,

to which the member would have been entitled—

- (aa) in the case of a deceased active member, at the member's date of death; and
- (bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service; and
- (b) in respect of each pension to which the person has been entitled for less than 5 years, the lesser of—
  - (i) 5 times the annual rate of the pension payable after exercising any option under regulation 2.D.14 (general option to exchange part of pension for lump sum), less the amount of the pension payments already made to the member; and
  - (ii) an amount equal to twice the member's reckonable pay by reference to which the pension was calculated, less any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14.

(3) If the pensioner member exercised the option under regulation 2.D.17 (election to allocate pension), the reference in paragraph (2)(b) to the amount of the pension payments already made to the member is a reference to the amount of the pension payments that would have been made apart from the election.

(4) In the case of a 2008 Section Optant—

- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 2.K.12 (amount of pension and lump sum paid to a 2008 Section Optant); and
- (b) the amount of the Optant's reckonable pay for the purposes of paragraph (2)(b)(ii) must be reduced by the aggregate of—

- (i) the amount of the lump sum paid to the Optant under regulation 2.K.12; and
- (ii) the lump sum under regulation 2.D.14 referred to in paragraph (2)(b)(ii).

**Amount of lump sum: dual capacity members (members with pensions under regulation 2.D.5)**

**2.E.19.**—(1) Paragraph (2) applies for determining the lump sum payable by virtue of this regulation on the death of a member who—

- (a) was an active member or a non-contributing member in service in an employment in respect of which the member has exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55); and
  - (b) was a pensioner member by virtue of being entitled to a pension under that regulation.
- (2) The lump sum is an amount equal to the sum of—
- (a) twice the appropriate fraction of the member’s reckonable pay in that employment at the date of death; and
  - (b) if the member had been entitled to any pensions under regulation 2.D.5 for less than 5 years, the lesser of—
    - (i) the total of the guarantee amounts for each of those pensions (see paragraph (3)); and
    - (ii) the aggregate lump sum cap (see paragraph (4)),

and, in the case of a 2008 Section Optant, this is subject to regulation 2.K.23 (lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations).

(3) The guarantee amount for a pension under regulation 2.D.5 is 5 times the annual rate of the pension at the date of death, less the amount of the pension payments already made to the member in respect of the pension.

(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the reckonable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation 2.D.5 (partial retirement: members aged at least 55) was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulation 2.D.5 as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum); and
  - (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 2.K.12.
- (5) In this regulation “the appropriate fraction” means—

$$\frac{DPS}{TDPS}$$

where—

*DPS* is, where the member continues in pensionable service as an active member or a non-contributing member on the option day (or the last such option day if the option has been exercised more than once), the total number of days which do not form part of the specified percentage of pensionable service at the option day; and

*TDPS* is the aggregate of *DPS* and the total number of days of pensionable service (at the option day or the last such option day if the option has been exercised more than once) which forms part of the specified percentage of pensionable service.

**Amount of lump sum: pension credit members**

**2.E.20.**—(1) The lump sum payable on the death of a pension credit member who dies before any benefits derived from the member’s pension credit have become payable is an amount equal to the amount of the annual pension to which the member would have become entitled under regulation 2.D.2 (pension credit members) if the member had reached age 65 on the date of death, multiplied by 2.25.

(2) The lump sum payable on the death of a pension credit member who dies after a pension under that regulation has become payable is equal to the lower of—

- (a) the annual amounts of the pension that would have been payable to the member during so much of the period of 5 years beginning with the date on which the pension became payable as falls after the date of death; and
- (b) the amount produced by the formula—

$$2RP - CLS$$

where—

*RP* is the amount as at the valuation day of the reckonable pay of the debit member from whose rights the pension credit member’s pension credit is derived; and

*CLS* is the amount of the lump sum (if any) paid to the pension credit member as a result of the member exercising the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) on becoming entitled to the pension under regulation 2.D.2 (pension credit members).

(3) For the purposes of paragraph (2), the annual amount of the pension is taken to be the sum of—

- (a) the annual amount of the pension as at the beginning date for that pension; and
- (b) the increase (if any) in that annual amount under the Pensions (Increase) Act 1971<sup>(80)</sup> payable as at the date of death.

(4) In this regulation—

“valuation day” means the day referred to in section 29(7) (the pension and annuity requirements) of the 1999 Act; and

“the beginning date”, in relation to a pension, has the meaning given in section 8(2A) of the Pensions (Increase) Act 1971.

**Pension payable when member dies on or after reaching age 75**

**2.E.21.**—(1) If, on or before 5th April 2011, a pensioner member or a pension credit member died—

- (a) on or after reaching age 75; and
- (b) before the fifth anniversary of the date on which the member’s pension became payable,

an annual pension, calculated in accordance with paragraph (2), is payable from the day following the date of the member’s death until the anniversary referred to in sub-paragraph (b).

(2) The pension payable under paragraph (1) is determined by—

- (a) calculating the amount of the lump sum that would have been payable to the pensioner member or pension credit member under regulation 2.E.17(2) (single capacity members and recent leavers) or, as the case may be, regulation 2.E.20 (pension credit members) as if on the day the member died the member had not reached age 75; and



(b) converting any amount determined in sub-paragraph (a) to an annual pension payable for the period specified in paragraph (1), by reference to guidance and tables provided by the scheme actuary for the purpose.

(3) The “beginning date” of the pension calculated in paragraph (2) is, for the purposes of the Pensions (Increase) Act 1971, the day immediately following the date of death of the pensioner member or pension credit member.

(4) The pension calculated under this regulation is payable in accordance with regulation 2.E.22 (payment of lump sums or pensions on death).

### **Payment of lump sums or pensions on death**

**2.E.22.**—(1) A lump sum payable under regulation 2.E.16 (lump sum benefits on death) or a pension payable under regulation 2.E.21 (pension payable when member dies on or after reaching age 75) must be paid in accordance with this regulation.

(2) The lump sum or pension must be paid to the member’s personal representatives, except so far as it is payable to a different person or body under paragraph (4), (6) or (10).

(3) A member may give notice to the Scottish Ministers—

(a) specifying—

(i) the member’s personal representatives;

(ii) one or more other individuals; or

(iii) one incorporated or unincorporated body,

to whom the lump sum or pension is to be paid; and

(b) where two or more individuals are specified, specifying the percentage of the payment payable to each of them.

(4) If the member—

(a) has given notice under paragraph (3) specifying a person; and

(b) has not revoked that notice,

the lump sum or pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person, unless paragraph (5) or (7) applies.

(5) This paragraph applies if—

(a) the person specified in the notice has died before the payment can be made; or

(b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.

(6) If the member—

(a) leaves a surviving adult dependant; and

(b) has not given notice under paragraph (3) or has revoked any notice so given,

the lump sum or pension may be paid to that person unless paragraph (7) applies.

(7) This paragraph applies if the person to whom the lump sum or pension (or a specified percentage of the lump sum or pension) would otherwise be payable has been convicted of an offence specified in regulation 2.J.8(2) (forfeiture of rights to benefit) and the Scottish Ministers have directed, as a consequence of that conviction, that the person’s right to a payment in respect of the member’s death is forfeited.

(8) A notice under paragraph (3)—

(a) must be given in writing; and

(b) may be revoked at any time by a further notice in writing.

(9) The Scottish Ministers may pay the lump sum to any person claiming to be the member's personal representative or otherwise to fall within paragraph (3)(a), without requiring proof that the person is such a person concerned, if the lump sum does not exceed—

- (a) £5,000; or
- (b) any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965<sup>(81)</sup> as the amount to be treated as substituted for references to £500 in section 1 of that Act.

(10) The member's personal representatives may, as part of the distribution of the member's estate, give irrevocable notice to the Scottish Ministers—

- (a) specifying—
  - (i) one or more individuals; or
  - (ii) one incorporated or unincorporated body,
 

to whom the benefit of the pension under regulation 2.E.21 (pension payable when member dies on or after reaching age 75), from the date of receipt of the notice by the Scottish Ministers, is to be assigned; and
- (b) where two or more individuals are specified under sub-paragraph (a)(i), specifying the percentage of the pension payable to each of them,

and the pension (or, as the case may be, the percentage of it specified in respect of the person) may be paid to the person or body, unless paragraph (11) applies.

(11) This paragraph applies if—

- (a) the person specified in the notice has died before the payment can be made;
- (b) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable; or
- (c) the person to whom the pension (or a specified percentage of the pension) would otherwise be payable has been convicted of an offence specified in regulation 2.J.8(2) (forfeiture of rights to benefits) and the Scottish Ministers have directed, as a consequence of that conviction, that the person's right to a payment in respect of the member's death is forfeited.

(12) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.20.

(13) In the case of a Waiting Period Joiner, this regulation is subject to regulation 2.L.2.

### **Tax treatment under the 2004 Act of lump sums payable on pensioners' deaths**

**2.E.23.**—(1) A pensioner's lump sum (less any amount deducted under paragraph (4) where that applies) is to be treated for the purposes of the 2004 Act as a pension protection lump sum death benefit if the member has given the scheme administrator a statement in writing that any such lump sum is to be treated as such a benefit.

(2) In this regulation "pensioner's lump sum" means—

- (a) a lump sum payable under regulation 2.E.16 (lump sum benefits on death) to which regulation 2.E.17(2) (single capacity members and recent leavers) applies; or
- (b) so much of a lump sum payable under regulation 2.E.16 as is calculated under regulation 2.E.18(2) (dual capacity members).

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<sup>(81)</sup> 1965 c.32. Section 6(1) was amended by the section 24(2) of the Parliamentary Pensions Act 1972 (c.48), section 6(3) of the National Debt Act 1972 (c.65), paragraph 20 of Schedule 9 to the Friendly Societies Act 1974 (c.46), section 36(2) of, and Schedule 4 to, the Judicial Pensions Act 1981 (c.20), section 1(1) of, and Part 1 of Schedule 1 to the Statute Law (Repeals) Act 1986 (c.12), section 6 of, and Schedule 4 of, the Parliamentary and other Pensions Act 1987 (c.45) and paragraph 1 of Schedule 12 to the Merchant Shipping Act 1995 (c.21).

(3) Paragraph (4) applies if the person who is the scheme administrator for the purposes of section 206 (special lump sum death benefits charge) of the 2004 Act (“the administrator”) is liable for tax under that section in respect of a pension protection lump sum death benefit.

(4) The administrator may deduct from the lump sum the tax payable in respect of it.

### *Miscellaneous and general provisions*

#### **Death during period of absence**

**2.E.24.**—(1) This regulation applies if a person dies during a period when the person—

- (a) is absent from work because of illness or injury;
- (b) is on ordinary maternity leave;
- (c) is on ordinary adoption leave; or
- (d) is on paternity leave or parental leave,

and the earnings used to calculate the person’s pensionable pay have ceased to be paid before the person’s death.

(2) Any benefits payable under this Chapter must be calculated as if the person had died in pensionable service on the day before those earnings ceased.

#### **Polygamous marriages**

**2.E.25.**—(1) This regulation applies if—

- (a) a member dies without leaving a surviving adult dependant; and
- (b) at the date of death the member was married to one or more persons under a law which permits polygamy.

(2) If, had the member left a surviving adult dependant, any benefit would have been payable to the surviving adult dependant as such, that benefit is payable—

- (a) if there is one such person, to that person; or
- (b) if there are two or more such persons, to those persons in equal shares.

(3) Such a person’s or persons’ share of a pension is not to be increased on the death of any other such person.

#### **Dual capacity membership: death benefits**

**2.E.26.**—(1) This paragraph applies if the deceased member was—

- (a) a member of this Section of the scheme of two or more of the kinds specified in paragraph (2);
- (b) a pensioner member in respect of two or more pensions; or
- (c) a deferred member in respect of two or more pensions.

(2) The kinds of member are—

- (a) an active member;
- (b) a deferred member;
- (c) a pensioner member; and
- (d) a pension credit member.

(3) If paragraph (1) applies, the general rule is that—

- (a) benefits are payable in respect of the member under this Chapter as if two or more members of the kinds in question had died (so that two or more pensions or lump sums are payable in respect of the one deceased member); and
  - (b) the amounts payable are determined accordingly.
- (4) Paragraph (3) does not apply where specific provision to the contrary is made about a person to whom that paragraph would otherwise apply.
- (5) In relation to the specific provision referred to in paragraph (4), see in particular—
- (a) regulation 2.E.3 (amount of surviving adult’s pension: active members and non-contributing members);
  - (b) regulation 2.E.4 (amount of surviving adult’s pension: pensioner members);
  - (c) regulation 2.E.7 (amount of surviving adult’s pension: re-employed pensioners);
  - (d) regulation 2.E.8 (surviving dependent child’s pension);
  - (e) regulation 2.E.14 (amount of surviving child’s pension: re-employed pensioners);
  - (f) regulation 2.E.16 (lump sum benefits on death: introduction);
  - (g) regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments));
  - (h) regulation 2.E.19 (amount of lump sum: dual capacity members (members with pensions under regulation 2.D.5));
  - (i) regulation 2.E.21 (pension payable when member dies on or after reaching age 75); and
  - (j) Chapter 2.G (re-employment and rejoining the scheme).
- (6) If a person who is a pension credit member is entitled to two or more pension credits—
- (a) benefits are payable in respect of the person under this Chapter as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable in respect of the one pension credit member); and
  - (b) the amounts of those benefits are determined accordingly.

### **Guaranteed minimum pensions for surviving spouses and civil partners**

**2.E.27.**—(1) If a person who is the surviving spouse or civil partner of a deceased active, deferred or pensioner member has a guaranteed minimum pension under section 17 (minimum pensions for widows and widowers) of the 1993 Act in relation to benefits in respect of the deceased member under this Section of the scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under the 1993 Act in relation to such a person and such a person’s rights under a scheme not to be met in the case of the person;
  - (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the person; and
  - (c) paragraph (2) is without prejudice to the generality of this paragraph.
- (2) If apart from this regulation—
- (a) no pension would be payable to the surviving spouse or civil partner under this Chapter; or
  - (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,
- a pension the weekly rate of which is equal to the guaranteed minimum is payable to the surviving spouse or civil partner for life or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.
- (3) Paragraph (2) does not apply to a pension that is forfeited—

- (a) as a result of a conviction for treason; or
- (b) in a case where an offence within regulation 2.J.8(2)(b) (forfeiture of rights to benefits) is committed.

## CHAPTER 2.F

### TRANSFERS

#### *Transfers-out*

#### **Introduction: rights to transfer value payment**

**2.F.1.**—(1) This Chapter supplements the rights conferred by or under Chapter 4 (transfer values) of Part 4 of the 1993 Act.

(2) This Chapter is without prejudice to Chapter 4 (transfer values) and Chapter 5 (early leavers: cash transfer sums and contribution refunds) of Part 4 of the 1993 Act.

(3) Accordingly—

- (a) a member to whom Chapter 4 of that Part applies (see section 93(1)(a) of that Act) is entitled to require the payment of a transfer value in respect of the rights to benefit that have accrued to or in respect of the member under this Section of the scheme; and
- (b) a member to whom Chapter 5 of that Part applies (see section 101AA(1) of that Act) is entitled to a cash transfer sum or a contribution refund in accordance with that Chapter.

(4) Subject to paragraph (5) and the other provisions of this Chapter, any other member is entitled to require such a payment as if such rights had accrued to or in respect of the member by reference to the pensionable service the member is entitled to count under this Section of the scheme (and references in this Chapter to the member's accrued rights or benefits are to be read accordingly).

(5) Paragraph (4) does not—

- (a) give any rights to an active member;
- (b) give any rights to a pensioner member in respect of the pension to which the member has become entitled; or
- (c) give any rights to a pension credit member in respect of rights that are directly attributable to a pension credit.

#### **Applications for statements of entitlement**

**2.F.2.**—(1) A member who requires a transfer value payment to be made must apply in writing to the Scottish Ministers for a statement of the amount of the cash equivalent of the member's accrued benefits under this Section of the scheme at the guarantee date (a "statement of entitlement").

(2) In this Part, the "guarantee date" means any date that—

- (a) falls within the required period;
- (b) is chosen by the Scottish Ministers;
- (c) is specified in the statement of entitlement; and
- (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.

(3) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

(4) In paragraph (2) "the required period" means—

- (a) the period of three months beginning with the date of the member's application for a statement of entitlement; or
  - (b) such longer period beginning with that date (but not exceeding 6 months) as may reasonably be required if, for reasons beyond the control of the Scottish Ministers, the requisite information cannot be obtained to calculate the amount of the cash equivalent.
- (5) In counting the period of 10 days referred to in paragraph (2)(d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.

#### **Applications for transfer value payments: general**

**2.F.3.**—(1) A member who has applied for and received a statement of entitlement under regulation 2.F.2 (applications for statements of entitlement) may apply in writing to the Scottish Ministers for a transfer value payment to be made.

(2) On making such an application a member becomes entitled to a payment of an amount equal, or amounts equal in aggregate, to the amount specified in the statement of entitlement (or such other amount as may be payable by virtue of regulation 2.F.4(2) (applications for transfer value payments: time limits)).

(3) In this Part such a payment is referred to as the “guaranteed cash equivalent transfer value payment”.

(4) The application must specify the pension scheme or other arrangement to which the payment or payments should be applied.

(5) The application must meet such other conditions as the Scottish Ministers may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Scottish Ministers, unless an agreement for the application of the whole or part of the guaranteed cash equivalent transfer value payment has been entered into with a third party before the notice is given.

#### **Applications for transfer value payments: time limits**

**2.F.4.**—(1) Subject to paragraph (4), an application under regulation 2.F.3(1) (applications for transfer value payments: general) must be made before the end of the period of three months beginning with the guarantee date, and the payment must be made no later than—

- (a) 6 months after that date; or
- (b) if it is earlier, the date on which the member reaches 65.

(2) If the payment is made later than 6 months after the guarantee date, the amount of the payment to which the member is entitled must be increased by—

- (a) the amount by which the amount specified in the statement of entitlement falls short of the amount it would have been if the guarantee date had been the date on which the payment is made; or
- (b) if it is greater and there was no reasonable excuse for the delay in payment, interest on the amount specified in the statement of entitlement, calculated on a daily basis over the period from the guarantee date to the date when the payment is made at an annual rate of 1% above the base rate.

(3) Paragraph (4) applies if—

- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to this Section of the scheme; and
- (b) it appears to the Scottish Ministers that the proceedings may lead to all or part of the member's benefits being forfeited under regulation 2.J.8 (forfeiture of rights to benefit).

(4) The Scottish Ministers may defer doing what is needed to carry out what the member requires until the end of the period of three months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.

(5) In any case where a direction is given under regulation 2.J.8 for the forfeiture of a member's benefits, this regulation applies as if the amount specified in the statement of entitlement were reduced by an amount equal to the value of the benefits forfeited, as determined by the scheme actuary.

(6) In respect of an applicant who does not fall within regulation 2.D.1(2) (normal retirement pensions)—

- (a) whose application requires the guaranteed cash equivalent transfer value payment to be made to an occupational pension scheme or a personal pension scheme, an application under paragraph (1) may only be made if—
  - (i) the applicant became a member of that scheme not later than the end of the period of 12 months beginning with the day after the date on which the member ceased to be in the pensionable service in which the rights accrued (“the leaving date”); and
  - (ii) the application is made not later than—
    - (aa) the end of the period of 12 months beginning with the day on which the applicant became a member of that scheme; or
    - (bb) if the applicant became a member of that scheme on or before the leaving date, the end of the period of 12 months beginning with the day after the leaving date; and
- (b) in any other case, an application under paragraph (1) may only be made before the end of the period of 12 months beginning with the day after the leaving date.

### **Ways in which transfer value payments may be applied**

**2.F.5.**—(1) A member may only require the Scottish Ministers to apply the guaranteed cash equivalent transfer value payment in one or more of the ways permitted under section 95 (ways of taking right to cash equivalent) of the 1993 Act.

(2) Paragraph (1) applies whether or not the member is entitled to a guaranteed cash equivalent transfer value payment under Chapter 4 (transfer values) of Part 4 of the 1993 Act.

(3) The whole of the guaranteed cash equivalent transfer value payment must be applied, unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member's accrued rights to a guaranteed minimum pension; or
- (b) the member's accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

is to be excluded from the guaranteed cash equivalent transfer value payment if section 96(2) (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) of the 1993 Act applies.

(5) A transfer payment may only be made to—

- (a) a pension scheme that is registered under Chapter 2 (registration of pension schemes) of Part 4 of the 2004 Act; or
- (b) an arrangement that is a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169(2) (recognised charges) of the 2004 Act).

**Calculating amounts of transfer value payments**

**2.F.6.**—(1) Subject to paragraphs (2), (3) and (5), the amount of the guaranteed cash equivalent transfer value payment is to be calculated and verified by the Scottish Ministers in accordance with the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(82)</sup>.

(2) Before determining the factors to be used in the calculation of the member’s guaranteed cash equivalent transfer value payment, the Scottish Ministers must take advice from the scheme actuary.

(3) Subject to paragraph (5), if the amount calculated in accordance with paragraph (1) is less than the member’s minimum transfer value (if any), the amount of the guaranteed cash equivalent transfer value payment is to be equal to that value instead.

(4) In paragraph (3) “minimum transfer value” means—

(a) in the case of a person other than a 2008 Section Optant, the sum of—

- (i) any transfer value payments that have been made to this Section of the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the scheme by reference to which the accrued rights subject to the transfer are calculated; and
- (ii) any contributions paid by the person under Chapter 2.C (contributions) as a result of which the person is entitled to count such service; and

(b) in the case of a 2008 Section Optant, the sum of—

- (i) any transfer value payments that have been made to this Section of the scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the scheme by reference to which the accrued rights subject to the transfer are calculated;
- (ii) any contributions paid by the person under Chapter 2.C as a result of which the person is entitled to count such service; and
- (iii) the aggregate of any—
  - (aa) transfer value payments that have been made to the 1995 Section in respect of the Optant;
  - (bb) any contributions paid by the Optant under regulation D1 (contributions by members) of the 2011 Regulations in respect of pensionable employment in that Section on or before 31st March 2008; and
  - (cc) any payments made by the Optant under regulation Q1 (right to buy additional service) of the 2011 Regulations for the purchase of additional service,

which entitle the Optant to count, under Chapter 2.K of this Section of the scheme, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.

(5) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is to be calculated—

- (a) in accordance with those arrangements rather than paragraphs (1) and (3); and
- (b) by reference to the guidance and tables provided by the scheme actuary for the purposes of this paragraph that are in use on the date used for the calculation.

(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.

<sup>(82)</sup> S.I. 1996/1847, amended by 1997/786 and 1613, 2003/1727, 2005/72, 686, 706 and 3377, 2006/34 and 744, 2007/60, 2008/1050 and 2450, 2009/615, 2011/1246 and 2012/692.



### **Effect of transfers-out**

**2.F.7.**—(1) If a transfer value payment is made under this Chapter in respect of a person’s rights under this Section of the scheme, those rights are extinguished.

### *Transfers-in*

### **Right to apply for acceptance of transfer value payment from another scheme**

**2.F.8.**—(1) Subject to the provisions of this Chapter, an active member may apply for a transfer value payment in respect of some or all of the rights that have accrued to or in respect of the member under any kind of scheme or arrangement to which paragraph (2) applies, other than a FSAVC, to be accepted by this Section of the scheme.

(2) This paragraph applies to—

- (a) an occupational pension scheme other than a corresponding health service scheme;
- (b) a personal pension scheme;
- (c) a registered buy-out policy;
- (d) a corresponding 1995 scheme; and
- (e) a corresponding 2008 scheme.

(3) A member who makes an application for a transfer value to be accepted by the Scottish Ministers in respect of the member’s rights under a corresponding 2008 scheme may not also make an application for a transfer value to be accepted in respect of the member’s rights under a corresponding 1995 scheme.

(4) Paragraph (1) does not apply to rights that are directly attributable to a pension credit.

(5) In this regulation “FSAVC” means—

- (a) a scheme which—
  - (i) immediately before 6th April 2006 was approved by the Commissioners for Her Majesty’s Revenue and Customs by virtue of section 591(2)(h) (free-standing AVC schemes) of the Income and Corporation Taxes Act 1988<sup>(83)</sup>; and
  - (ii) became a registered scheme for the purposes of the 2004 Act by virtue of Schedule 36 (pensions schemes etc: transitional provisions and savings) to that Act; or
- (b) a scheme established on or after that date as a registered free-standing AVC scheme.

(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

### **Procedure for applications under regulation 2.F.8**

**2.F.9.**—(1) An application under regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme)—

- (a) must be made in writing;
- (b) must specify this Section of the scheme or arrangement from which the transfer value payment is to be made and the anticipated amount of the payment;
- (c) except in the case of a member whose transfer value payment is from a corresponding health service scheme, may only be made during the period of one year beginning with the day on which the applicant becomes eligible to be an active member of this Section of the scheme;

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<sup>(83)</sup> 1988 c.1. Section 591 was repealed by Part 3 of Schedule 42 of the Finance Act 2004 (c.12).

- (d) must be made before the applicant reaches age 65;
  - (e) if the Scottish Ministers so require, may only be made if the member has first requested a statement—
    - (i) in the case of a transfer made under the public sector transfer arrangements, of the service that the member will be entitled to count as a result of the transfer if the payment is accepted by the Scottish Ministers; and
    - (ii) in a case where the transfer is not made under those arrangements (including a transfer of rights from a corresponding 1995 scheme), of the service that member will be entitled so to count if the payment is so accepted by the Scottish Ministers within such period as is specified in the statement; and
  - (f) must meet such other conditions as the Scottish Ministers may require.
- (2) A statement given to the member in pursuance of such a request as is mentioned in paragraph (1)(e)—
- (a) in the case mentioned in paragraph (1)(e)(i), must inform the member of the effect (if any) of regulation 2.A.13 (restriction on pensionable pay used for calculating benefits in respect of capped transferred-in service) in the member’s case; and
  - (b) in the case mentioned in paragraph (1)(e)(ii), must specify such amount as is calculated in accordance with guidance and tables provided by the scheme actuary for the purpose.

#### **Acceptance of transfer value payments**

**2.F.10.**—(1) If an application is duly made by a member under regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme) the Scottish Ministers may accept the transfer value payment if such conditions as the Scottish Ministers may require are met, unless paragraph (6) applies.

(2) If the Scottish Ministers accept the payment—

- (a) the member is entitled to count the appropriate period of pensionable service for the purposes of calculating benefits payable to or in respect of the member under this Section of the scheme; but
- (b) in the case of a member any of whose service falls to be treated as capped transferred-in service, with such period as so falls counting as such service<sup>(84)</sup>.

(3) In paragraph (2)(a), “the appropriate period” means the period calculated in accordance with regulation 2.F.11 (calculation of transferred-in pensionable service).

(4) If the Scottish Ministers accept the payment from the member of a corresponding 1995 scheme, the relevant period of pensionable service must count when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.4 (meaning of “pensionable service”: part-time service).

(5) In paragraph (4), “the relevant period” means the period calculated in accordance with regulation 2.F.11.

(6) The Scottish Ministers may not accept a transfer value payment if—

- (a) it would be applied in whole or in part in respect of the member’s or the member’s spouse’s entitlement to a guaranteed minimum pension; and
- (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the scheme actuary for the purposes of this paragraph.

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<sup>(84)</sup> For the meaning of “capped transferred-in service” see regulation 2.F.12.

(7) Paragraph (6) does not apply if the transfer would be paid under the public sector transfer arrangements.

(8) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

### **Calculation of transferred-in pensionable service**

**2.F.11.**—(1) Subject to the following provisions of this regulation, the period of service that the member is entitled to count under regulation 2.F.10 (acceptance of transfer value payments) as the result of a transfer is to be calculated in accordance with any guidance and tables provided by the scheme actuary for that purpose.

(2) For the purposes of the calculation under paragraph (1), the member’s annual pensionable pay is to be taken to be the amount of that pay as at the day on which the member’s pensionable service begins (“the starting day”), unless paragraph (3) applies.

(3) If the transfer payment is received by the Scottish Ministers more than 12 months after the starting day, the member’s annual pensionable pay is to be taken to be the amount of that pay as at the day on which the transfer payment is received.

(4) Paragraph (3) does not apply if—

- (a) a written statement estimating the pensionable service that the member would be entitled to count as result of the transfer was given to the member by the Scottish Ministers during the period of three months ending 12 months after the starting day; and
- (b) the transfer payment is received by the Scottish Ministers less than three months after the date of the statement.

(5) If the transfer value payment is accepted under the public sector transfer arrangements, the period of pensionable service the member is entitled to count is to be calculated—

- (a) in accordance with those arrangements; and
- (b) by reference to the guidance and tables provided by the scheme actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

(6) If the transfer value payment is accepted from a corresponding 2008 scheme, the period of pensionable service the member is entitled to count is the period that the member would be entitled to count if—

- (a) the member’s employment to which that Section applied were NHS employment in respect of which the member was a member of this Section of the scheme; and
- (b) the member’s contributions to that Section were contributions to this Section of the scheme.

(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

### **Meaning of “capped transferred-in service”**

**2.F.12.**—(1) This regulation applies if—

- (a) the Scottish Ministers accept a transfer value payment in respect of a member under a transfer to which the public sector transfer arrangements apply; and
- (b) the service in respect of which the transfer is made was, or included, capped service in employment to which the scheme from which the transfer value payment is made (“the transferring scheme”) applied.

(2) For the purposes of this Part, the same proportion of the service that the member is entitled to count under regulation 2.F.10(2)(a) (acceptance of transfer value payments) as the capped service

bears to the whole of the service in respect of which the transfer is made is capped transferred-in service.

(3) For the purposes of paragraph (1)(b), the service in respect of which the transfer is made was capped service so far as—

- (a) in the case of service before 6th April 2006, the member was an active member of the transferring scheme whose pension under that 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) (earnings cap) of the Income and Corporation Taxes Act 1988<sup>(85)</sup>; or
- (b) in the case of service on or after 6th April 2006, the member was an active member of the transferring scheme whose pension under that 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 that section was calculated for tax years ending before that date.

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

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.

### **Public sector transfer arrangements**

**2.F.13.** This Chapter applies in the case of a transfer to which the public sector transfer arrangements apply as it applies in other cases, except to the extent that—

- (a) any provision in this Chapter provides otherwise; or
- (b) the arrangements themselves make different provision.

### **Bulk transfers-out**

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

- (a) the employment of one or more active members (“the transferring employees”) is transferred without their consent to a new employer;
- (b) on that transfer the transferring employees cease to be eligible to be active members of this Section of the scheme;
- (c) after that transfer the transferring employees become active members of another occupational pension scheme (“the new employer's scheme”);
- (d) the Scottish Ministers have agreed special terms for the making of transfer value payments in respect of the transferring employees to the new employer's scheme, after consultation with the scheme actuary; and
- (e) the transferring employees have consented in writing to their rights being transferred in accordance with those terms.

(2) In the case of the transferring members or the transferred members, the transfer value payment to be paid—

- (a) is not to be calculated in accordance with regulation 2.F.6 (calculating amounts of transfer value payments); and
- (b) is such amount as the Scottish Ministers determine to be appropriate in accordance with the special terms after consulting the scheme actuary.

<sup>(85)</sup> 1988 c.1. Section 590C was repealed, subject to transitional provisions and savings, by Part 3 of Schedule 42 to the Finance Act 2004 (c.12).

(3) This Chapter has effect with such modifications as are necessary to give effect to those terms.

(4) If the transfer is directly or indirectly attributable to an enactment, this Chapter has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.

(5) Where a member to whom this regulation applies is also a member to whom Part 3 applies, a bulk transfer under this regulation also operates as a transfer of that member's rights under Part 3.

### **Bulk transfers-in**

**2.F.15.**—(1) This regulation applies if—

- (a) the employment of one or more persons (“the transferred employees”) is transferred without their consent to a new employer;
- (b) on that transfer the transferred employees cease to be active members of an occupational pension scheme (“the former employer’s scheme”);
- (c) after that transfer the transferred employees become active members of this Section of the scheme;
- (d) the Scottish Ministers have agreed special terms for the acceptance of transfer value payments in respect of the transferred employees from the former employer’s scheme, after consulting the scheme actuary; and
- (e) the transferred employees have consented in writing to their rights being transferred in accordance with those terms.

(2) This Section of the scheme has effect with such modifications as are necessary to give effect to the terms mentioned in paragraph (1)(e).

(3) If the transfer is directly or indirectly attributable to an enactment, this Section of the scheme has effect with such modifications as the Scottish Ministers consider necessary in consequence of the transfer.

### **EU and other overseas transfers**

**2.F.16.**—(1) This regulation applies in the case of a member whose transfer is subject to transfer arrangements concluded with any scheme for the provision of retirement benefits established outside the United Kingdom.

(2) This Section of the scheme applies in relation to the member with such modifications as the Scottish Ministers consider necessary to comply with—

- (a) the terms of those arrangements;
- (b) any applicable provision contained in or made under any enactment; and
- (c) the requirements to be met by a scheme registered under Chapter 2 (registration of pension schemes) of Part 4 of the 2004 Act.

### *Transfers across*

#### **Transfers across from the 1995 Section**

**2.F.17.**—(1) An active member who is entitled to have a cash equivalent value calculated in respect of the entirety of the member's rights under the 1995 Section pursuant to regulation M7 (member's right to transfer a preserved pension to the 2008 Section) of the 2011 Regulations, may apply to convert that cash equivalent value into rights under this Section of the scheme.

(2) An application under paragraph (1)—

- (a) must be made in writing using an application form provided for the purpose by the Scottish Ministers;
  - (b) may only be made before the end of the period of three months beginning with the guarantee date established under regulation M7 of the 2011 Regulations;
  - (c) may only be made if the member has first been furnished with a statement of the pensionable service that the member will be entitled to count under this Section of the scheme if the application is accepted by the Scottish Ministers;
  - (d) must meet such other conditions as the Scottish Ministers may require; and
  - (e) is irrevocable.
- (3) The statement mentioned in paragraph (2)(c) must—
- (a) inform the member of the amount of pensionable service that will count under this Section of the scheme for the purposes of calculating benefits payable to or in respect of the member;
  - (b) inform the member of the amount of pensionable service that will count under this Section of the scheme when determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 2.A.3 (meaning of “pensionable service”); and
  - (c) be calculated in accordance with any guidance, tables and other relevant factors provided by the scheme actuary for that purpose.
- (4) If the Scottish Ministers accept an application under paragraph (1)—
- (a) the member is entitled to count the period of pensionable service mentioned in paragraphs (3)(a) and (b) for the purposes of calculating benefits payable to or in respect of the member under this Section of the scheme; and
  - (b) that period of pensionable service must be credited to the member on the day that the Scottish Ministers received the member’s application.

## CHAPTER 2.G

### RE-EMPLOYMENT AND REJOINING THE SCHEME

#### *Preliminary*

#### **Application of Chapter 2.G**

- 2.G.1.**—(1) Subject to paragraphs (4) to (7), this Chapter applies to persons who—
- (a) have been active members of this Section of the scheme in respect of their service in an employment;
  - (b) have ceased to be employed in that employment and have become deferred members or pensioner members of this Section of the scheme because of their rights in respect of that service;
  - (c) become employed again in an employment that qualifies them to belong to this Section of the scheme; and
  - (d) become active members of this Section of the scheme in respect of their service in that employment.
- (2) In this Part, a member to whom this Chapter applies is referred to as a “re-employed member”.
- (3) In this Chapter, in relation to any re-employed member—
- (a) the service referred to in paragraph (1)(a) is referred to as “the earlier service”; and

- (b) the service referred to in paragraph (1)(d) is referred to as “the later service”.
- (4) This Chapter also applies to members who—
  - (a) cease to be active members in respect of their service in an employment as the result of exercising the option under regulation 2.B.6 (opting out of this Section of the scheme); and
  - (b) later become active members in that or another employment,as it applies to members who cease to be employed in the employment in which they are active members, and paragraph (3) must be read accordingly.
- (5) This Chapter does not apply if the earlier service and the later service are treated as a single continuous period of pensionable service under regulation 2.A.5(6) (pensionable service: breaks in service).
- (6) Regulation 2.G.4 (effect of re-employment on upper tier ill health pensions) applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to this Section of the scheme.
- (7) Regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking) applies whether or not the deferred member becomes an active member in the NHS employment in which the deferred member is re-employed.
- (8) If a re-employed member ceases to be an active member again, this Chapter applies again in respect of the later service as if it were the earlier service (and so on).

*General rule: separate treatment of service etc. except where unfavourable to member*

**General rule: separate treatment of service etc.**

- 2.G.2.**—(1) The general rule is that, in accordance with regulations 2.D.20 (dual capacity membership) and 2.E.26 (dual capacity membership: death benefits)—
- (a) the re-employed member’s pensionable service in respect of the earlier service and the later service are treated separately; and
  - (b) the re-employed member’s reckonable pay in respect of the earlier service and the later service are determined separately.
- (2) This regulation is subject to the provisions mentioned in regulations 2.D.20(4) and 2.E.26(5).

**Exception to general rule in regulation 2.G.2**

- 2.G.3.**—(1) The general rule in regulation 2.G.2 (general rule: separate treatment of service etc.) does not apply if—
- (a) at the time that the member first becomes entitled to a pension under this Section of the scheme in respect of the earlier service or the later service; or
  - (b) if it is earlier, at the time of the member’s death,
- in the opinion of the Scottish Ministers the benefits payable to or in respect of the member would be more valuable if that general rule were disregarded.
- (2) Accordingly, in a case within paragraph (1)—
- (a) the member’s pensionable service in respect of the earlier service and the later service is to be treated as one single continuous period;
  - (b) the member’s qualifying service in respect of the earlier service and the later service is to be treated as one single continuous period;
  - (c) the member is not to be treated as a deferred member in respect of the earlier service; and

- (d) the member's reckonable pay in respect of the later period is to be determined by reference to the earlier period as well as the later period<sup>(86)</sup>.
- (3) This regulation is subject to regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking).

*Special rules about re-employment of ill health pensioners*

**Effect of re-employment on upper tier ill health pensions**

**2.G.4.**—(1) This regulation applies to a member who is entitled to an upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) in respect of earlier service and who—

- (a) did not opt to exchange that pension for a lump sum in accordance with regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum); and
- (b) has re-entered further employment (the “further employment”).

(2) Subject to paragraphs (3) and (4), the member ceases to be entitled to the upper tier ill health pension under regulation 2.D.8 and becomes entitled to a lower tier ill health pension under that regulation.

(3) In a case where the further employment is—

- (a) not NHS employment; and
- (b) an excluded employment,

paragraph (2) does not apply.

(4) In a case where the further employment is—

- (a) NHS employment; and
- (b) an excluded employment,

paragraph (2) does not apply during the initial period.

(5) As regards a further employment in NHS employment—

- (a) paragraph (2) applies from the first lower tier ill health pension payment date which falls after the first anniversary of the member's re-entry into NHS employment, whether or not that day is part of a continuous period of further NHS employment beginning with entry into that employment; and
- (b) the member may not rejoin this Section of the scheme in respect of that employment or any other NHS employment until after the first anniversary of the member's re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.

(6) For the purposes of this regulation—

- (a) an employment is an excluded employment at any time in a tax year, in relation to a member, if the member's earnings at that time for the purposes of national insurance from the employment and any other employments are such that the lower earnings limit for that year is not exceeded;
- (b) for the purposes of paragraph (2) an employment that has been an excluded employment in a tax year is not to be treated as ceasing to be such an employment until the first day following the end of the pension pay period for the upper tier ill health pension in which the limit described in sub-paragraph (a) is first exceeded; and

<sup>(86)</sup> See regulation 2.A.11(8) (meaning of “reckonable pay”: general).



- (c) “the initial period” means the period of 12 months beginning with the day on which the member first enters an employment which results in this regulation applying.
- (7) A member who, before attaining age 65, has ceased to be entitled to an upper tier ill health pension under paragraph (2), and who—
- (a) is in further NHS employment and ceases to be employed at all during the initial period; or
  - (b) is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which that further employment ceased to be an excluded employment,
- may apply to the Scottish Ministers under this paragraph to become entitled to an upper tier ill health pension.
- (8) An application under paragraph (7)—
- (a) where paragraph (7)(a) applies, must—
    - (i) state that the member has ceased to be employed at all;
    - (ii) be made within the initial period; and
    - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner<sup>(87)</sup> that the member meets the condition in regulation 2.D.8(3)(a) (early retirement on ill health: active members and non-contributing members); and
  - (b) where paragraph (7)(b) applies, must—
    - (i) state that the member has ceased to be employed at all;
    - (ii) be made within a period of one year beginning with the day on which that employment ceased to be an excluded employment; and
    - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 2.D.8(3)(a).
- (9) If on an application under paragraph (7) the Scottish Ministers are satisfied that the member meets the condition in regulation 2.D.8(3)(a), from the day following that on which the member’s last employment ceased—
- (a) the member ceases to be entitled to the lower tier ill health pension under regulation 2.D.8; and
  - (b) becomes entitled to an upper tier ill health pension under that regulation in respect of the earlier service.
- (10) A member who falls within paragraph (1) must—
- (a) notify the Scottish Ministers if the member is in NHS employment at the end of the initial period;
  - (b) notify the Scottish Ministers if the member’s aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded; and
  - (c) provide the Scottish Ministers or any other person specified by the Scottish Ministers with such further information as the Scottish Ministers specify concerning any further employment.
- (11) This regulation is subject to regulation 2.G.5 (re-employed lower tier ill health pensioners).

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(87) “Registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978 (c.30), as amended by S.I. 2002/3135.

**Re-employed lower tier ill health pensioners**

**2.G.5.**—(1) This regulation applies to re-employed members who are entitled to a lower tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) in respect of the earlier service.

(2) For the purposes of determining whether a member can count 45 years of pensionable service for any purpose, the earlier service and the later service are aggregated.

(3) If the re-employed member became entitled to a lower tier ill health pension for the earlier service, and on the termination of the later service the member becomes entitled to—

- (a) a lower tier ill health pension; or
- (b) an upper tier ill health pension,

under regulation 2.D.8 in respect of the later service, the re-employed member is entitled to the benefits set out in paragraph (4).

(4) Subject to paragraph (5), the benefits mentioned in paragraph (3) are—

- (a) the member's original lower tier ill health pension in respect of the member's earlier service; and
- (b) a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of the later service.

(5) If the re-employed member—

- (a) ceases to be entitled to a lower tier ill health pension in respect of the earlier service;
- (b) becomes entitled to an upper tier ill health pension in respect of that earlier service in accordance with regulation 2.D.9(3) (re-assessment of entitlement to an ill health pension); and
- (c) on the termination of the later service, the member becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of that later service,

the re-employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are—

- (a) an upper tier ill health pension paid in accordance with regulation 2.D.9 in respect of the member's earlier service; and
- (b) a lower tier ill health pension in respect of the member's later service.

*Special rule for members transferred out on transfer of undertaking***Deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking**

**2.G.6.**—(1) This regulation applies if a re-employed member becomes entitled to a pension under regulation 2.D.1 (normal retirement pensions) or 2.D.4 (early payment of pension with actuarial reduction) by virtue of the application of regulation 2.D.13(2)(a) (exceptions to requirement that NHS employment must have ceased).

(2) Regulation 2.G.3 (exception to general rule) does not apply.

(3) Subject to paragraph (4), any benefits payable in respect of the later service are calculated without regard to pensionable service in respect of the earlier service.

(4) For the purposes of determining whether a member can count 45 years pensionable service for any purpose, the earlier service and the later service are aggregated.

## CHAPTER 2.H

### ABATEMENT

#### Application of Chapter 2.H

**2.H.1.**—(1) This Chapter applies if—

- (a) a person who is a pensioner member of this Section of the scheme is employed in NHS employment;
- (b) the person’s employment is not employment to which the person was transferred as a result of a transfer of an undertaking to the person’s employer;
- (c) the person’s pension is a pension under—
  - (i) regulation 2.D.8 (early retirement on ill health: active members and non-contributing members);
  - (ii) regulation 2.D.10 (early retirement on ill health: deferred members); or
  - (iii) regulation 2.D.11(1)(d)(ii) (early retirement on termination of employment by employing authority) in a case where the Scottish Ministers certified that the member’s employment was terminated in the interests of the efficiency of the service in which the member was employed; and
- (d) the person has not reached age 65.

(2) In this Chapter, “NHS employment” includes—

- (a) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(88)</sup>;
- (b) employment to which regulations made under section 10 of the Superannuation Act 1972<sup>(89)</sup> and having effect in England and Wales apply;
- (c) employment to which regulations made under article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(90)</sup> apply;
- (d) employment commencing on or before 31st March 2012 to which a scheme made under section 2 of the Superannuation Act 1984<sup>(91)</sup> (an Act of Tynwald) applies; and
- (e) employment with an employer with whom an agreement has been made under section 235 (superannuation of officers of certain hospitals) of the 2006 Act.

(3) Subject to paragraph (4), in this Chapter—

- (a) a person to whom this Chapter applies is referred to as an “employed pensioner”;
- (b) the pension to which the employed pensioner is entitled is referred to as the “old service pension”;
- (c) the employment in respect of which the pension is payable is referred to as the “the old employment”; and
- (d) the employment in which the employed pensioner is employed is referred to as the “new employment”.

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<sup>(88)</sup> 1967 c.28. Section 7 was amended by S.I. 1968/1699, section 10(5) of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), paragraph 24 of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

<sup>(89)</sup> 1972 c.11. Section 10 was amended by Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), Schedule 7 to the National Health Service (Scotland) Act 1972 (c.58), sections 4(2) and 8(5) and (6) of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 7 of Schedule 8 to the Pension Schemes Act 1993 (c.48) and by S.I. 2001/3649.

<sup>(90)</sup> S.I. 1972/1073 (N.I. 10).

<sup>(91)</sup> 1984 c.8 (Tynwald).

(4) This Chapter applies whether or not the person is an active member of this Section of the scheme in the new employment.

### **Information**

**2.H.2.**—(1) A person who becomes an employed pensioner must—

- (a) inform the person’s employer in the new employment, and any other person that the Scottish Ministers may specify, that the old service pension is payable; and
- (b) where requested, provide any information about the person’s relevant income in the new employment to the Scottish Ministers or to any other person that the Scottish Ministers may specify.

(2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must—

- (a) inform the person’s employer in the other new employment, and any other person that the Scottish Ministers may specify, that the old service pension is payable; and
- (b) where requested, provide any information about the person’s relevant income in the new employment to the Scottish Ministers or to any person that the Scottish Ministers may specify.

(3) In this regulation “relevant income” has the meaning given in regulation 2.H.4.

### **Reduction of pension**

**2.H.3.**—(1) If the condition in paragraph (2) is met, the amount of the old service pension for any financial year is to be reduced.

(2) The condition is that the employed pensioner’s relevant income for the financial year exceeds the employed pensioner’s previous pay.

(3) The amount of the reduction under paragraph (1) is equal to that excess but cannot exceed the enhancement amount.

(4) In this regulation “relevant income” and “enhancement amount” have the meanings given in regulation 2.H.4.

(5) In this regulation “previous pay” has the meaning given in regulation 2.H.5.

(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member’s previous pay is to be reduced proportionately.

(7) If the member has a guaranteed minimum pension under section 14 of the 1993 Act in relation to the old service pension, nothing in this regulation requires the reduction of the old service pension below the amount of the member’s guaranteed minimum pension in relation to it.

### **Meaning of “relevant income”**

**2.H.4.**—(1) The employed pensioner’s relevant income for a financial year is the aggregate of—

- (a) the amount of pay received by the employed pensioner during that year from the new employment (assuming, in any case where the employed pensioner is not an active member of this Section of the scheme in the new employment, that the employed pensioner is such a member); and
- (b) the enhancement amount in relation to the old service pension.

(2) The enhancement amount, in relation to an old service pension, is the difference between—

- (a) the amount of that pension for that year; and

- (b) the amount that that pension would have been had it been payable under regulation 2.D.4 (early payment of pension with actuarial reduction).
- (3) If the old service pension is payable under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) or 2.D.10 (early retirement on ill health: deferred members) to an employed pensioner who had not reached age 55 at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)—
  - (a) the fact that entitlement to a pension under regulation 2.D.4 depends on reaching that age is ignored; and
  - (b) the employed person’s actual age at the relevant time is taken into account in determining the reduction to be made under regulation 2.D.4(2).
- (4) If the old service pension is an upper tier ill health pension, for the purposes of paragraph (2)(b), only the employed pensioner’s actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 2.D.4.
- (5) If the employed pensioner exercised the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.
- (6) The resulting reduction in the pension is to be taken into account for the purposes of this regulation if the employed pensioner—
  - (a) exercised the option under regulation 2.D.17 (election to allocate pension) in relation to the old service pension; or
  - (b) is a 2008 Section Optant who was entitled to a lump sum under regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant) in relation to the old service pension.
- (7) In this regulation, references to the amount of a pension for any financial year are to its amount for that year after any increases payable under the Pensions (Increase) Act 1971(92) in respect of that pension, including the increases that would have been payable in respect of any amount not paid because of a reduction ignored under paragraph (5).

**Meaning of “previous pay”: general**

- 2.H.5.**—(1) For the purposes of this Chapter and subject to paragraph (3) and regulations 2.H.6 (members with concurrent employments) and 2.H.7 (part-time employment), an employed pensioner’s previous pay is the greater of—
- (a) the employed pensioner’s reckonable pay for the purposes of the old service pension; and
  - (b) the annual rate of pay for the old employment at the time it ceased.
- (2) In this regulation “annual rate of pay” means the sum of—
- (a) the annual rate of so much of the employed pensioner’s pensionable pay immediately before the old service pension became payable as consisted of—
    - (i) salary;
    - (ii) wages; or
    - (iii) other regular payments,of a fixed nature; and
  - (b) so much of any fees and other regular payments not of a fixed nature as—

- (i) was payable to the employed pensioner during the period of 12 months ending with the day the old employment ceased; and
- (ii) formed part of the employed pensioner's pensionable pay.

(3) Subject to regulation 2.H.6, the amount to be taken as the employed pensioner's previous pay must be adjusted in each financial year for inflation.

(4) The reference in paragraph (3) to adjusting that amount in each financial year for inflation is to increasing it by the same amount as that by which an annual pension equal to that amount would have been increased under the Pensions (Increase) Act 1971(93) at 6th April in that financial year if—

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

(5) In this regulation, "the beginning date" in relation to a pension means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) (meaning of "pension" and other supplementary provisions) of that Act).

#### **Meaning of "previous pay": members with concurrent employments**

**2.H.6.**—(1) In the case of an employed pensioner who held one or more other NHS employments at the same time as the old employments, the amount to be taken as the employed pensioner's previous pay is the sum of—

- (a) the amount of the employed pensioner's previous pay, in accordance with regulation 2.H.5 (meaning of "previous pay": general);
- (b) in respect of any of the other NHS employments which is held in the financial year mentioned in regulation 2.H.3(2) (reduction of pension), the annual rate of pay for those employments in that financial year; and
- (c) in respect of any of the other NHS employments which is not held in this Section of the financial year mentioned in regulation 2.H.3(2), the pensionable pay for that employment for the period of 12 months ending with the day before the old employment ceased (or, if the employed pensioner was not a member of this Section of the scheme in that employment in that period, the amount that would have been the pensionable pay for it assuming that the employed pensioner had been such a member.

(2) The amount to be taken as the employed pensioner's previous pay in accordance with paragraph (1) must be adjusted in each financial year for inflation in the manner set out in regulation 2.H.5(4).

#### **Application of this Chapter to part-time employment**

**2.H.7.**—(1) This regulation provides for the application of this Chapter where the old employment or the new employment is a part-time employment.

(2) The amount of the employed pensioner's reckonable pay for the purposes of the old service pension, as referred to in regulation 2.H.5(1)(a) (meaning of "previous pay": general), must be determined without reference to regulation 2.A.14 (non-concurrent part-time employment) or 2.A.15 (concurrent part-time employments).

### **Employed pensioners with more than one pension**

**2.H.8.**—(1) This regulation provides for the application of this Chapter where a person is entitled to more than one old service pension falling within regulation 2.H.1(1)(c) (application of Chapter 2.H) in any financial year.

(2) In regulation 2.H.3 (reduction of pension), for paragraphs (1) to (3) substitute—

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

(2) The condition is that the employed pensioner’s relevant income for the financial year exceeds the employed pensioner’s previous pay for all the old employments.

(3) The amount of the reduction under paragraph (1) in the case of each of the pensions is equal to the same proportion of that excess as the amount of the pension for the financial year before the reduction bears to the sum of the pensions for that year before the reduction.”.

(3) In regulation 2.H.4(1)(b) (meaning of “relevant income”), for “the old service pension” substitute “all the old service pensions”.

(4) Regulation 2.H.9 (provisional reductions and later adjustments) applies as if references to the old service pension were references to all those pensions.

### **Provisional reductions and later adjustments**

**2.H.9.**—(1) If it appears to the Scottish Ministers that the condition in regulation 2.H.3(2) (reduction of pension) will be met in any financial year in respect of the old service pension for that year, the Scottish Ministers may reduce the amount of that pension paid at any time in the financial year.

(2) Where the old service pension for a financial year is being reduced under this Chapter, the Scottish Ministers must review the amount of the reduction—

(a) at the end of the financial year; and

(b) at any time during the financial year if it appears to the Scottish Ministers that—

(i) the amount of the reduction made for the year is or may become incorrect; or

(ii) no reduction should be made.

(3) If at any time during the financial year it so appears, the Scottish Ministers must make such adjustments, whether by altering the amount of the reduction or by repaying to the employed pensioner any amount that should not have been deducted from the pension, as appear to the Scottish Ministers to be required.

(4) If at the end of the financial year it is apparent that—

(a) the reduction in the old service pension for the year was excessive; or

(b) no such reduction should have been made,

the Scottish Ministers must repay the amount due to the employed pensioner.

(5) If at the end of the financial year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 2.H.3 (reduction of pension) was not made, the employed pensioner must repay the excess to the Scottish Ministers.

(6) Paragraph (5) does not affect the Scottish Ministers’ right to recover a payment or overpayment in any case where the Scottish Ministers consider it appropriate to do so.

CHAPTER 2.J  
MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

*Scheme administrator*

**Appointment of scheme administrator**

**2.J.1.** For the purposes of this Part and of Part 4 (registered pension schemes: tax reliefs and exceptions) of the 2004 Act, the scheme administrator is the Scottish Public Pensions Agency.

*Claims*

**Claims for benefits**

**2.J.2.—**(1) A person claiming to be entitled to benefits under this Part (“the claimant”) must make a claim in writing to the Scottish Ministers.

(2) Pursuant to such a claim, the claimant and, where appropriate, the member’s employing authority (including any previous employing authority of the member) must provide such—

- (a) evidence of entitlement;
- (b) information required in order to deal with the claim; and
- (c) authority or permission as may be necessary for the release by third parties of information in the claimant’s or employing authority’s possession relating to the claimant or member,

as the Scottish Ministers may from time to time require for the purposes of this Part.

(3) A claim referred to in paragraph (1) may be made by a person or persons other than the claimant where the Scottish Ministers so provide.

(4) Any claim for benefit required in writing under this Part, and any evidence, information, authority or permission given in connection with that claim, may be made or given by means of an electronic communication where such method of communication is approved by the Scottish Ministers.

(5) In this regulation, “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000<sup>(94)</sup>.

*Provision of information*

**Provision of information: continuing entitlement to benefit**

**2.J.3.—**(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part, of any benefit payable to that person.

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(94) 2000 c.7. Section 15 was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c.21).



*Power to extend time limits*

**Power to extend time limits**

**2.J.4.** The Scottish Ministers may extend any time limit mentioned in this Part as it applies in any particular case.

*Beneficiaries who are incapable of looking after their affairs*

**Beneficiaries who are incapable of looking after their affairs**

**2.J.5.**—(1) In the case of a beneficiary who, in the opinion of the Scottish Ministers, is by reason of illness, mental disorder, minority or otherwise unable to look after the beneficiary's affairs, the Scottish Ministers may—

- (a) use any amount due to the beneficiary under this Section of the scheme for the beneficiary's benefit; or
- (b) pay it to some other person to do so.

(2) Payment of an amount to a person other than the beneficiary under paragraph (1) discharges the Scottish Ministers from any obligation under this Section of the scheme in respect of the amount.

*Commutation of small pensions*

**Commutation of small pensions**

**2.J.6.**—(1) The Scottish Ministers may pay any person entitled to a pension under this Section of the scheme a lump sum representing the capital value of the pension and of any benefits that might have become payable under this Section of the scheme on the person's death apart from the payment if the conditions specified in paragraph (2) are met.

(2) The conditions are that the payment complies with the following requirements (so far as they apply)—

- (a) the contracting-out requirements;
- (b) the preservation requirements;
- (c) regulation 2 of the Occupational Pension Schemes (Assignment, Forfeiture, Bankruptcy etc.) Regulations 1997<sup>(95)</sup>;
- (d) the lump sum rule (see, in particular, paragraph 7 (trivial commutation lump sums) of Schedule 29 to the 2004 Act);
- (e) the lump sum death benefit rule (see, in particular, paragraph 20 (trivial commutation lump sum death benefit) of that Schedule); and
- (f) regulation 12 (payments by larger pension schemes) of the Registered Pension Schemes (Authorised Payments) Regulations 2009<sup>(96)</sup>.

(3) The lump sum must be calculated by the Scottish Ministers in accordance with advice from the scheme actuary.

(4) The payment of a lump sum under this regulation discharges all liabilities of the Scottish Ministers in respect of the pension in question and of any other such benefits as mentioned in paragraph (1).

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<sup>(95)</sup> S.I. 1997/785. Section 2 was amended by S.I. 2005/706, 2006/744 and 778 and 2009/2930.

<sup>(96)</sup> S.I. 2009/1171. Section 12 was amended by paragraph 17 of Schedule 20 to the Finance Act 2007 (c.11) and S.I. 2011/1751.

*Reduction in and forfeiture of benefits***Reduction in benefits in cases where loss caused by member's crime, negligence or fraud**

**2.J.7.**—(1) If, as a result of a member's criminal, negligent or fraudulent act or omission, a loss to public funds occurs that arises out of or is connected with the member's employment relationship with the member's employer, the Scottish Ministers—

- (a) may reduce any pension or other benefit payable to, or in respect of, the member under these Regulations by an amount less than or equal to the loss; or
- (b) in a case where the loss equals or exceeds the value of the pension or other benefit, reduce them to nil or by any amount less than that value.

(2) Paragraph (1) does not apply so far as the pension or other benefit—

- (a) is a guaranteed minimum pension or safeguarded rights which are derived from rights to such a pension; or
- (b) arise out of a transfer payment.

(3) If the Scottish Ministers propose to exercise the power under paragraph (1), the Scottish Ministers must give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction may be made under paragraph (1) until the member's obligation to make good the loss has become enforceable—

- (a) under the order of a competent court; or
- (b) in consequence of an award of an arbiter to be appointed (failing agreement by the parties) by the sheriff, or, in England and Wales an arbitrator.

(5) If the loss is suffered by an employing authority, the amount of any reduction under paragraph (1) must be paid to that authority.

**Forfeiture of rights to benefits**

**2.J.8.**—(1) The Scottish Ministers may direct that all or part of any rights to benefits or other amounts payable to or in respect of a member under these Regulations be forfeited if—

- (a) the member is convicted of any of the offences specified in paragraph (2); and
- (b) the offence was committed before the benefit or other amount becomes payable.

(2) The offences are—

- (a) an offence in connection with employment that qualifies the member to belong to this Section of the scheme, in respect of which the Scottish Ministers have issued a forfeiture certificate; and
- (b) one or more offences under the Official Secrets Acts 1911 to 1989<sup>(97)</sup> for which the member has been sentenced on the same occasion to—
  - (i) a term of imprisonment of at least 10 years; or
  - (ii) two or more consecutive terms amounting in the aggregate to at least 10 years.

(3) In paragraph (2)(a) “forfeiture certificate” means a certificate that the Scottish Ministers are satisfied that the offence—

- (a) has been gravely injurious to the State; or
- (b) is liable to lead to serious loss of confidence in the public service.

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<sup>(97)</sup> 1911 c.11, 1920 c.75, 1939 c.121 and 1989 c.6.

(4) The Scottish Ministers may direct that all or part of any rights to benefits or other amounts payable in respect of a member under these Regulations be forfeited where the benefits or amounts are payable to a person to whom paragraph (5) applies who has been convicted of the murder or culpable homicide of that member or of any other offence of which unlawful killing of that member is an element.

(5) This paragraph applies to a person who is—

- (a) the member's widow, widower, surviving nominated partner or surviving civil partner;
- (b) a dependant of the member;
- (c) a person not falling within sub-paragraph (a) or (b) who is specified in a notice given under regulation 2.E.22(3) (payment of lump sums or pensions on death); or
- (d) a person to whom such benefits or amounts are payable under the member's will or on the member's intestacy.

(6) A guaranteed minimum pension or safeguarded rights which are derived from rights to such pensions may be forfeited only if paragraph (1) applies in the case of an offence within paragraph (2) (b).

#### *Provisions about tax*

#### **Deduction of tax**

**2.J.9.**—(1) The Scottish Ministers may deduct from any payment under this Section of the scheme any tax which is required to be paid in respect of it.

(2) Without prejudice to the generality of paragraph (1), if a person becoming entitled to a benefit under this Part—

- (a) which is a benefit crystallisation event under section 216 (benefit crystallisation events and amounts crystallised) of the 2004 Act; and
- (b) a lifetime allowance charge under section 214 (lifetime allowance charge) of the 2004 Act arises when that event occurs,

the tax charged must be paid by the scheme administrator.

(3) Paragraph (4) applies if—

- (a) a member has given the scheme administrator a statement in accordance with regulation 2.E.23 (tax treatment of lump sums payable on pensioners' deaths) that a lump sum payable under that regulation is to be treated as a pension protection lump sum death benefit in accordance with paragraph 14 of Schedule 29 to the 2004 Act; and
- (b) has not withdrawn that statement.

(4) Without prejudice to the generality of paragraph (1), before the lump sum is paid, the scheme administrator may deduct the tax payable under section 206 (special lump sum death benefits charge) of the 2004 Act<sup>(98)</sup> from the lump sum.

(5) Paragraph (6) applies if—

- (a) a lump sum is payable on the death of a pensioner member in accordance with regulation 2.E.17(2) (amount of lump sum: single capacity members and recent leavers); and
- (b) that lump sum is payable in respect of a member who had reached age 75 at the date of the member's death.

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(98) Section 206 was inserted by paragraph 41 of Schedule 16 to the Finance Act 2011 (c.11).

(6) Without prejudice to the generality of paragraph (1), before the lump sum is paid, the scheme administrator may deduct the tax payable under section 206 (special lump sum benefits charge) of the 2004 Act from the lump sum.

(7) Paragraph (8) applies if—

- (a) an active member, a non-contributing member or a pension credit member exercises the option in regulation 2.D.15(1) (option for members in serious ill health to exchange whole pension for lump sum) to exchange a relevant pension for a lump sum in accordance with paragraph (3)(a) of that regulation; and
- (b) that lump sum payment is to be made to a member who has reached age 75.

(8) Without prejudice to the generality of paragraph (1), before the lump sum is paid, the scheme administrator may deduct the tax payable under section 205A (serious ill health lump sum charge)<sup>(99)</sup> of the 2004 Act from the lump sum.

(9) Without prejudice to the generality of paragraph (1), a person who—

- (a) is liable to an annual allowance charge in accordance with section 237A (liability of individual)<sup>(100)</sup> of the 2004 Act; and
- (b) meets the conditions specified in paragraph (1) of section 237B (liability of scheme administrator)<sup>(101)</sup> of the 2004 Act,

may give notice in writing to the scheme administrator specifying that the scheme administrator and the person are to be jointly and severally liable for the payment of the annual allowance charge due in respect of that person in accordance with section 237B of the 2004 Act.

(10) Unless the scheme administrator's liability to an annual allowance charge referred to in paragraph (9) is discharged in accordance with section 237D (discharge of scheme administrator's liability)<sup>(102)</sup> of the 2004 Act—

- (a) that annual allowance charge is to be paid by the scheme administrator on behalf of the member; and
- (b) the member's present or future benefits in respect of which that charge arises are to be adjusted in accordance with section 237E (consequential benefit adjustments to be reasonable etc.)<sup>(103)</sup> of the 2004 Act and calculated by reference to advice provided by the scheme actuary for that purpose.

### *Interest on delayed payments*

#### **Interest on late payment of benefits and refunds of contributions**

**2.J.10.**—(1) This regulation applies if the whole or part of an amount to which this regulation applies is not paid by the end of the period of one month beginning with the due date.

(2) This regulation applies to any amount payable by way of a pension, lump sum or refund of contributions under this Section of the scheme (other than any amount due under regulation 2.C.5 (contributions by employing authorities: general) or 2.C.6 (contributions by employing authorities: early retirement on termination of employment) or interim or substitute award.

(3) The Scottish Ministers must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Scottish Ministers are satisfied that the unpaid amount

<sup>(99)</sup> Section 205A was inserted by paragraph 14 of Schedule 16 to the Finance Act 2011 (c.11).

<sup>(100)</sup> Section 237A was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c.11).

<sup>(101)</sup> Section 237B was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c.11).

<sup>(102)</sup> Section 237D was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c.11).

<sup>(103)</sup> Section 237E was inserted by paragraph 15 of Schedule 17 to the Finance Act 2011 (c.11).

was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.

(4) The interest on the unpaid amount is calculated at the base rate on a day to day basis from the due date for the amount to the date of its payment and compounded with three monthly rests.

(5) In this regulation, except where paragraph (6) applies, “due date” in relation to an unpaid amount (other than an unpaid amount in respect of an interim or substitute award) means—

- (a) in the case of an amount in respect of a pension or lump sum payable to a member under Chapter 2.D (members’ retirement benefits) or a lump sum under regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant), the day immediately following that of the member’s retirement from pensionable employment;
- (b) in the case of an amount in respect of a pension payable on a member’s death, other than a pension payable under regulation 2.E.21 (pension payable when member dies on or after reaching age 75), the day after the date of death;
- (c) in the case of an amount in respect of a lump sum under Chapter 2.E (death benefits) that is payable to the member’s personal representatives, the earlier of—
  - (i) the date on which confirmation of an executor nominate or dative was produced to the Scottish Ministers; and
  - (ii) the date on which the Scottish Ministers were satisfied that the lump sum may be paid as provided in regulation 2.E.22(9) (payment of lump sums or pensions on death);
- (d) in the case of an amount in respect of any other lump sum under that Chapter, the day after the date of the member’s death;
- (e) in the case of an amount in respect of a refund of contributions, the day after that on which the Scottish Ministers received from the Commissioners of Her Majesty’s Revenue and Customs the information required for the purposes of calculating the amount to be subtracted under regulation 2.C.18(3) or (4) (repayment of contributions); and
- (f) in the case of an amount in respect of a pension under regulation 2.E.21 that is payable to—
  - (i) the member’s personal representatives, the date on which any document that is by law sufficient evidence of the grant of confirmation as executor of the member, was produced to the Scottish Ministers;
  - (ii) any person or body to whom the pension has been assigned by the member’s personal representatives, the date on which the notice under regulation 2.E.22(10) was received by the Scottish Ministers; and
  - (iii) any person or body other than those referred to in heads (i) and (ii), the day immediately following the day of the member’s death.

(6) The due date for an unpaid amount—

- (a) referred to in paragraph (5) in respect of which the Scottish Ministers were not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5), be the due date; and
- (b) in respect of an interim or substitute award,

is the first day on which the Scottish Ministers are in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.

(7) In this regulation, “interim or substitute award” means—

- (a) any amount paid by way of an interim payment calculated by reference to an expected benefit under this Section of the scheme pending final calculation of the full value of that benefit;

- (b) any amount paid that increases the amount of an earlier payment due to a backdated or subsequent increase in pensionable pay; and
- (c) any amount paid that increases the amount of an earlier payment due to the payment of an upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) paid to a member in substitution for a lower tier ill health pension under that regulation following a determination by the Scottish Ministers under regulation 2.D.9 (re-assessment of entitlement to an ill health pension).

### *Determinations*

#### **Determination of questions**

**2.J.11.**—(1) Except as otherwise provided by this Part, any question arising under this Section of the scheme is to be determined by the Scottish Ministers.

(2) Any such disagreement as is referred to in section 50 (resolution of disputes) of the 1995 Act must be resolved by the Scottish Ministers in accordance with any arrangements applicable under that section.

(3) In relation to decisions within paragraph (4), the Scottish Ministers may require any person entitled, or claiming to be entitled, to a benefit under this Part to submit to a medical examination by a registered medical practitioner<sup>(104)</sup> selected by the Scottish Ministers and in that event, the Scottish Ministers must also offer the person an opportunity of submitting a report from the person's own medical adviser as a result of an examination by that medical adviser, and the Scottish Ministers must take that report into consideration together with the report of the medical practitioner selected by the Scottish Ministers.

(4) This paragraph applies to any decision as to a person's health or degree of physical or mental infirmity or impairment that is required for the purposes of this Part and, in particular, any such decision required for the purposes of—

- (a) regulation 2.D.8(2)(a) or (3)(a) (early retirement on ill health: active members and non-contributing members);
- (b) regulation 2.D.9(1)(a) or (b) or (3) (re-assessment of entitlement to an ill health pension);
- (c) regulation 2.D.10(1)(a) or (2)(a) (early retirement on ill health: deferred members);
- (d) regulation 2.D.15(1) (option for members in serious ill health to exchange pension);
- (e) regulation 2.D.18(6)(b) (procedure for election under regulation 2.D.17);
- (f) regulation 2.E.9(1)(b)(ii) (meaning of “dependent child”);
- (g) regulation 2.J.5(1) (beneficiaries who are incapable of looking after their affairs); or
- (h) determining whether an individual satisfies the severe ill health condition for the purposes of section 229(3)(a) (total pension input amount) of the 2004 Act.

### *General prohibition on unauthorised payments*

#### **General prohibition on unauthorised payments**

**2.J.12.** Nothing in these Regulations requires or authorises the making of any payment, which, if made, would be an unauthorised payment for the purposes of Part 4 (pension schemes etc.) of the 2004 Act (see definition of “unauthorised payment” in section 160(5) of that Part<sup>(105)</sup>).

<sup>(104)</sup> “Registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978 (c.30), as amended by S.I. 2002/3135.  
<sup>(105)</sup> Section 160 was amended by the Finance Act 2006 (c.25), Schedules 21 and 23 and the Finance Act 2007 (c.11), Schedule 20, paragraph 5.

*Prohibition on assignment or charging of benefits*

**Prohibition on assignment or charging of benefits**

**2.J.13.**—(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under this Section of the scheme is void.

(2) On the bankruptcy or sequestration of any person entitled to a benefit under this Section of the scheme, no part of the benefit may be paid to the person’s trustee in bankruptcy or other person acting on behalf of the creditors, except in accordance with an order under section 310 (income payments orders) of the Insolvency Act 1986(106).

*Record keeping and contribution estimates*

**Employing authority and certain member record keeping and contribution estimates**

**2.J.14.**—(1) As regards a member who is a non-GP provider who derives practitioner income from the contracts, agreements or payments referred to in regulation 2.A.9(6) (meaning of “pensionable pay”), in respect of each scheme year, the member must provide the contracting Health Board (or someone appointed to act on its behalf) with a certificate of the member’s pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue & Customs in respect of the member’s earnings for that year,

no later than one month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards a GMS practice, a section 17C agreement provider or an HBPMS contractor, in respect of each scheme year, the practice or contractor must provide the Scottish Ministers with a statement of estimated pensionable earnings in respect of any non-GP provider that is a section 17C agreement provider or HBPMS contractor or who assists in the provisions of NHS services provided by that GMS practice, section 17C agreement provider or an HBPMS contractor, at least one month before the beginning of that scheme year.

(3) Subject to paragraphs (4) and (5) if, in respect of a scheme year, a non-GP provider has failed to comply with the requirements of paragraph (1), the non-GP provider’s pensionable earnings for that scheme year must be zero.

(4) If, in respect of a scheme year—

- (a) a non-GP provider has failed to comply with the requirements of paragraph (1);
- (b) a benefit is payable for, or in respect of the non-GP provider’s service; and
- (c) the non-GP provider’s employing authority is in possession of a figure representing all or part of the non-GP provider’s pensionable earnings for that year,

the Scottish Ministers may treat that figure as the amount of the non-GP provider’s pensionable earnings for that year.

(5) If, in respect of a scheme year, a non-GP provider—

- (a) dies without complying with the requirements of paragraph (1); or

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(106) 1986 c.45. Section 310 was amended by paragraph 15 of Schedule 3 to the Pensions Act 1995 (c.26), paragraph 2 of Schedule 2 to the Welfare Reform and Pensions Act 1999 (c.30), section 259(3) and (4) of, and Schedule 26 to, the Enterprise Act 2002 (c.40) and S.I. 2011/1730.

- (b) is, in the opinion of the Scottish Ministers, unable to look after the non-GP provider's own affairs by reason of illness or mental disorder,  
the Scottish Ministers may require that non-GP provider's personal representatives to provide the relevant certificate—
  - (i) within the period referred to in paragraph (1); or
  - (ii) within such other period as the Scottish Ministers permit.
- (6) All employing authorities under this Part of the Regulations must, for each scheme year—
  - (a) provide the Scottish Ministers with a statement of estimated total contributions due to this Section of the scheme under regulation 2.C.1 (contributions by members) and 2.C.5 (contributions by employing authorities: general); and
  - (b) maintain records of contributions to this Section of the scheme made under regulations 2.C.1 and 2.C.5.
- (7) The statement referred to in paragraph (6)(a) must be provided to the Scottish Ministers no later than two months after the end of each scheme year.
- (8) Except where the Scottish Ministers waive such requirement, an employing authority must provide the Scottish Ministers with a statement of contributions to this Section of the scheme recorded in accordance with paragraph (6)(b) no later than 2 months after the end of each scheme year.
- (9) The certificates and statements referred to in this regulation—
  - (a) must be in such form as the Scottish Ministers may from time to time require; and
  - (b) may be provided to the Scottish Ministers in such manner as the Scottish Ministers may from time to time permit.

## CHAPTER 2.K

### 2008 SECTION OPTANTS

#### *Application and options*

#### **Application of Chapter 2.K**

**2.K.1.**—(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 NHS employment in respect of which there is a liability to pay contributions to the scheme in accordance with regulation D1 (contributions by members) of the 2011 Regulations 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 B2(3) (age limits and restrictions on membership) of the 2011 Regulations;
- (c) both—
  - (i) became entitled to a pension under regulation E6 (early retirement pension (redundancy etc.)) or E7 (early retirement pension (redundancy etc. new starters and post-transition)) of the 2011 Regulations on leaving employment with one employing authority; and



- (ii) elected to continue to be an active member of the 1995 Section in respect of any other continuing pensionable employment in accordance with regulation R4(6) (members doing more than one job) of those Regulations.
- (2) This Chapter does not apply to a person if—
  - (a) that person is an active member of the 1995 Section by virtue of regulation E2(12) (early retirement pension on ill health grounds (pre 1st April 2008)) of the 2011 Regulations; or
  - (b) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.
- (3) In this Part, a member of this Section of the scheme to whom this Chapter applies is referred to as a “2008 Section Optant”.

### **Options for a member of the 1995 Section to join this Section of the scheme**

- 2.K.2.**—(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 Scottish Ministers; and
  - (b) would be eligible to join this Section of the scheme if that person met the condition in regulation 2.B.1(3)(a) (eligibility: general),
- 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) Subject to paragraphs (4) and (8) and regulation 2.K.19 (circumstances in which a member of the 1995 Section may defer making an option to join this Section of the scheme), the option may only be exercised by giving notice in writing to the scheme administrator—
- (a) in such form as the Scottish Ministers require; and
  - (b) before the date the Scottish Ministers specify for that purpose in the comparative statement of benefits under the 1995 Section and this Section of the scheme issued to that person (“the comparative statement”).
- (4) For the purpose of paragraph (3)—
- (a) the date specified by the Scottish Ministers in the comparative statement must be a date that is at least four months later than the comparative statement issue date; and
  - (b) the notice must be—
    - (i) irrevocable; and
    - (ii) treated as having been given on the date on which it is received by the scheme administrator.
- (5) Subject to paragraph (13)—
- (a) the option must be effective from the first day of the member’s pensionable employment in the 1995 Section falling on or after 1st April 2008;
  - (b) the person must be treated as if that person had been a member of this Section of the scheme from that date; and
  - (c) the member’s service both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section must 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.

(6) If contributions due from the member under Chapter 2.C (contributions) 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 Scottish Ministers require.

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

(9) The Scottish Ministers may accept an option to join this Section of the scheme that is received after the person ceases to be an active member of the 1995 Section if either paragraph (10) applies to that person or that person satisfies all of the following—

- (a) a comparative statement of benefits under the 1995 Section and this 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 E (benefits for members) of the 2011 Regulations;
- (c) the person has provided the Scottish Ministers with a notice in writing in such form as the Scottish Ministers 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) This paragraph applies to a person who—

- (a) has ceased to pay contributions in accordance with regulation D1(26) (special class officers) or (27) (non special class officers) of the 2011 Regulations;
- (b) is continuing in NHS employment; and
- (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.

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

- (a) at any time;
- (b) in writing in such form as may be required by the Scottish Ministers for that purpose.

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

(13) A person exercising an option under this regulation who is entitled to a pension under regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations 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 C3 (meaning of "qualifying service") of the 2011 Regulations in determining the person's entitlement to that pension.

(14) For the purposes of paragraphs (4), (9) and (10) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and this Section of the scheme is sent (whether by electronic communication or otherwise)—

- (a) to the person; or

(b) to the person's employing authority.

(15) Subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8), where paragraph (14)(b) applies the person must have a period equal to at least four months ending on the date specified by the Scottish Ministers in accordance with paragraph (4)(a) in which to opt to join this Section of the scheme.

#### *Transfer of service from the 1995 Section*

### **Service credited from the 1995 Section**

**2.K.3.**—(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 E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations,

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) Subject to paragraph (6) and regulation 2.K.13, 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 pensionable service up to and including 31st March 2008 which the Optant was entitled to count under regulation C2 (meaning of “pensionable service”) of the 2011 Regulations.

(4) Subject to paragraph (6) and regulation 2.K.13, 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 a period equal in length to the pensionable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 (meaning of “pensionable service”) of the 2011 Regulations calculated by multiplying that period of service (specified in days) by the factor specified in paragraph (5) applicable to that case.

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

(6) For the purposes of paragraphs (3) and (4), the pensionable service which the 2008 Section Optant is entitled to count under regulation C2 of the 2011 Regulations—

- (a) does not include any pensionable service the Optant was entitled to count under regulation C2(1)(d) of those Regulations;
- (b) is to be calculated without regard to regulation R3(5) (mental health officers) of those Regulations; and
- (c) where the Optant is entitled to count any part-time pensionable service in the 1995 Section, is to be calculated in accordance with regulation C4 (part-time employment) of those Regulations.

(7) Where 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**

**2.K.4.**—(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 (“an OPAP”) under regulations

Q8 (option to pay periodical contributions) or Q10 (option to pay lump sum) or whose employing authority had done so under regulation Q11 (additional lump sum) of the 2011 Regulations.

(2) Where paragraph (1) applies, the amount of additional pension that will count under this Section of the scheme must 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 Q14 (effect of payment of additional contributions) of the 2011 Regulations; and
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation Q13 (cancellation and cessation of options) of the 2011 Regulations.

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 2.C.14 (effect of payment of additional contributions) must be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q14 of the 2011 Regulations where the person's chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9), that would have been purchased in the 1995 Section under regulation Q14 of the 2011 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Scottish Ministers must have regard to the advice of the scheme actuary, where the person's chosen birthday under the OPAP was 60.

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 2.C.16 (effect of part payment of periodical contributions) must be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q13 of the 2011 Regulations, where the person's chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9) that would have been purchased in the 1995 Section under regulation Q13 of the 2011 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Scottish Ministers must have regard to the advice of the scheme actuary, where the person's chosen birthday under the OPAP was 60.

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the scheme must do so from the effective date specified in regulation 2.K.2(5) (options for a member of the 1995 Section to join this Section of the scheme).

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1); and
- (b) where at the effective date specified in regulation 2.K.2(5)—
  - (i) that person—
    - (aa) was making additional contributions in accordance with an OPAP exercised under regulation Q8 of the 2011 Regulations;
    - (bb) had applied to make, but had not yet begun making, additional contributions under regulation Q8 of the 2011 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 Q10 of the 2011 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 Q11 of the 2011 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 (option to pay additional periodical contributions to purchase additional pension) of the 2011

Regulations was 65, the OPAP referred to in that paragraph applies in this Section of the scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8 (periodical contributions), 2.C.10 (lump sum contribution) or 2.C.11 (lump sum contributions by employing authority) would apply in that case.

(8) Subject to paragraph (9) where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 (option to pay additional periodical contributions to purchase additional pension) of the 2011 Regulations was 60, the OPAP referred to in that paragraph applies in this Section of the scheme—

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8, 2.C.10 or 2.C.11 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; and
    - (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.
- (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 2.C.8, 2.C.10 or 2.C.11; or
- (b) the limit on the total increase in the member's pension referred to in regulation 2.C.8 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 2.C.8, 2.C.10 or 2.C.11 is subject to the limit on the total increase in the member's pension described in regulation 2.C.8, 2.C.10 or 2.C.11.

(10) The amount of additional pension that counts in this Section of the scheme in accordance with paragraphs (2) to (8) that exceeds the limit in paragraph (9) is to be converted to pensionable service for the purpose of regulation 2.A.3(1)(d) (meaning of "pensionable service"), and in determining the amount of additional pension to be converted into pensionable service, the Scottish Ministers must have regard to the advice of the scheme actuary.

### **Treatment of additional service**

**2.K.5.—**(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 pensionable service under regulation C2(1)(d) (meaning of "pensionable service") of the 2011 Regulations,

is 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) Subject to paragraphs (3) and (4), the additional service referred to in paragraph (1) is—

- (a) any additional service bought under regulation Q1 (right to buy additional service) of the 2011 Regulations before the date that person's option to join this Section of the scheme was received by the Scottish Ministers in accordance with regulation 2.K.2 (options for a member of the 1995 Section to join this Section of the scheme); and

- (b) any additional service bought under regulation 27 (purchase of added years of contributing service) or regulation 28 (additional payments to reckon certain periods of service as contributing service at actual length) of the National Health Service (Superannuation) (Scotland) Regulations 1980(**107**).
- (3) The additional service referred to in paragraph (2)(a) is to be calculated in accordance with—
- (a) regulation Q1(6) and, as the case may be, regulation Q1(15) (right to buy additional service) of the 2011 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) regulation Q7(1), (5) and (6) (but not (7)) (part payment for additional service or unreduced retirement lump sum) of the 2011 Regulations, in the case of an election that had ceased but had only partially been paid for at that date; or
  - (c) subject to paragraph (7), regulation Q7(1), (5) and (6) (but not (7)) of the 2011 Regulations, in the case of an election that remained in force immediately before that date.
- (4) The additional service referred to at paragraph (2)(b) is to be calculated in accordance with whichever of—
- (a) regulation 27(3) or (4)(b); or
  - (b) regulation 28(1) or (3)(b),
- of the National Health Service (Superannuation) (Scotland) Regulations 1980(**108**) 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 whichever of paragraphs (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 Scottish Ministers for that purpose.
- (7) Where a member was buying additional service by means of regular additional contributions immediately before the date referred to in paragraph (2)(a)—
- (a) the member’s election to buy additional service ceases from that date; and
  - (b) any additional contributions due under the election that are unpaid at that date must be deducted from the member’s pensionable pay in accordance with regulation 2.K.2(6) and (7) (options for a member of the 1995 Section to join this Section of the scheme).
- (8) Subject to regulation 2.K.18, 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) is to be added to the pensionable service the member is entitled to count under—
- (a) regulation 2.K.3(3), if the member is under age 60 on 1st October 2009; or
  - (b) regulation 2.K.3(4), if the member is age 60 or over on that date.

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(107) S.I. 1980/1177. Regulations 27 and 28 were revoked by S.I. 1995/365.

(108) S.I. 1980/1177. Regulations 27 and 28 were revoked by S.I. 1995/365.

### **Treatment of unreduced retirement lump sum**

**2.K.6.**—(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 Scottish Ministers in accordance with regulation 2.K.2 (options for a member of the 1995 Section to join this Section of the scheme), elects under regulation Q2 (right to buy an unreduced retirement lump sum) of the 2011 Regulations 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 ceases to be effective from 1st April 2008 and—

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

### **Treatment of 2008 Section Optants to whom regulation L1(3) of the 2011 Regulations applied immediately before 1st April 2008**

**2.K.7.**—(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 2.D (members' retirement benefits) and 2.E (death benefits); 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 L1(3) (treatment of pensionable service of early leavers returning to pensionable employment) of the 2011 Regulations.

(2) Subject to paragraph (3) 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 2.K.3 that relates to one or more periods of pensionable 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 2.K.3 that relates to a period of pensionable employment in the 1995 Section that occurred after a break of 12 months or more in such employment.

(3) Subject to regulation 2.D.8(5)(b)(ii) (early retirement on ill health: active members and non-contributing members), the Optant's benefits in respect of an earlier service credit mentioned in paragraph (2)(a) must be calculated—

- (a) separately; and
- (b) by reference to the final year's pensionable pay calculated in accordance with regulation C1 (meaning of "pensionable pay") of the 2011 Regulations in respect of that particular period.

### **Pension debit members**

**2.K.8.**—(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 benefits under this Section of the scheme is the amount of the reduction that applied to the Optant's benefits under the 1995 Section calculated in accordance with section (reduction of benefit: sharing of rights under pension arrangements) of the 1999 Act adjusted by the factor referred to in paragraph (3).

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

(4) The Scottish Ministers may, after taking advice from the scheme actuary, make such modifications to—

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

as the Scottish Ministers consider necessary for the purpose specified in paragraph (5).

(5) If in the opinion of the Scottish Ministers, 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 Scottish Ministers may modify those benefits as described in paragraph (4).

### **Treatment of 2008 Section Optants to whom regulation R8 of the 2011 Regulations applied immediately before 1st April 2008**

**2.K.9.**—(1) This regulation applies to a 2008 Section Optant—

- (a) whose earnings in respect of pensionable employment in the 1995 Section were reduced;
- (b) whose employer certified that the reduction in sub-paragraph (a) occurred in the circumstances described in regulation R8(2) (members whose earnings are reduced) of the 2011 Regulations;
- (c) who, subject to the agreement of the Scottish Ministers, would, on retirement or death, have become entitled to have a preserved pension calculated and paid as described in regulation E12 (preserved pension) of the 2011 Regulations in respect of pensionable 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 Chapter 2.D and 2.E.

(2) Subject to paragraph (3), 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 the Optant under regulation 2.K.3 that relates to one or more periods



of pensionable 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 2.K.3 that relates to a period of pensionable service in the 1995 Section after that Optant's earnings were reduced as described in paragraph (1).

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

- (a) separately; and
- (b) by reference to the final year's pensionable pay calculated in accordance with regulation C1 (meaning of "pensionable pay") of the 2011 Regulations in respect of that particular period.

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

**2.K.10.**—(1) This regulation applies for determining the amount of a 2008 Section 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 in regulation 2.K.11; and
- "pensionable pay" has the meaning given in regulation 2.A.9.

### **Meaning of "capped Optant service"**

**2.K.11.**—(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 2.K.3 (service and pensionable earning credited from the 1995 Section); or
- (b) regulation 2.K.5 (treatment of additional service),

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 2.K.3 and 2.K.5 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—
  - (i) the Optant was an active member of the 1995 Section; and
  - (ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) (earnings cap) of the Income and Corporation Taxes Act 1988(109); or
- (b) in the case of service on or after 6th April 2006—
  - (i) the Optant was an active member of the 1995 Section; and
  - (ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to remuneration limited in each tax year to an amount calculated in the same manner as the permitted maximum under section 590C(2) (earnings cap) of the Income and Corporation Taxes Act 1988, was calculated for tax years ending before that date.

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

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

**2.K.12.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) is entitled to an annual pension under Chapter 2.D (members' retirement benefits); or
  - (b) is entitled to the payment of a transfer value under Chapter 2.F (transfers) 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), that Optant is entitled to—
- (a) the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation that apply to that Optant; and
  - (b) the annual amount of pension referred to in paragraph (1)(a) to which that Optant is entitled, 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 must 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 must be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.
- (4) Subject to paragraphs (13) and (15), except in a case to which paragraph (6), (8), (10) or (12) applies, the amount of the lump sum must be determined as described in paragraph (5).
- (5) The amount of the lump sum must be determined by—
- (a) applying the formula—

(109) 1988 c.1. Section 590C was repealed by Part 3 of Schedule 42 to the Finance Act 2004 (c.12).

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

80

; 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 2.D.4 (early payment of pension with actuarial reduction); and  
 (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of the lump sum must 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) must be calculated by—

- (a) applying the formula—

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

80

; 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 2.D.5 (partial retirement: members aged at least 55) for the first time; and  
 (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of the lump sum must 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) must be calculated by—

- (a) applying the formula—

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

80

; 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 2.D.5 (partial retirement: members aged at least 55) for the first time; and  
 (b) has attained age 60 on the day of becoming entitled to that pension,

the amount of the lump sum must 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) must be calculated by—

- (a) applying the formula—

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

80

; 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 2.D.5(9)(a); 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 2.D in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of the lump sum payable under this regulation must be determined by the Scottish Ministers 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 must 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) is to 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 2.K.10 the determinations in this regulation must 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) In this regulation—

“1995 Section Pension Debit” means the amount by which the Optant’s annual pension under the 2011 Regulations was to be reduced in accordance with section 31 (reduction of benefit) of the 1999 Act;

“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 1971(110), calculated as at the time payment would first be due;

“Increase Factor” means the factor that would have applied to the 1995 Section Pension Debit for the purposes of section 29 (creation of pension debits and credits) of the 1999 Act if the Optant had become entitled to a pension under the 2011 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” means the Optant’s reckonable pay calculated under Chapter 2.A;

“Reduction Factor” means the reduction factor that the Scottish Ministers, after taking advice from the scheme actuary, determines would have applied to that Optant’s lump sum retiring allowance under regulation E14(7)(b) (deductions from lump sum) of the 2011 Regulations if that Optant had become entitled to a pension calculated under regulation E11 (early retirement pension (with actuarial reduction)) of those Regulations on the day the Optant became entitled to a pension under regulation 2.D.4 (early payment of pension with actuarial reduction) or, as the case may be, regulation 2.D.5 (partial retirement: members aged at least 55);

“Relevant Service” means 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 2.K.3 (service and pensionable earning credited from the 1995 Section); and
- (b) the period of pensionable service (if any) that the Optant is entitled to count under regulations 2.K.5 (treatment of Additional Service) and 2.K.18 (transitional provision: treatment of additional service in respect of Optants retiring on the grounds of ill Health under regulation 2.D.8);

“specified percentage” means the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 2.D.5(4)(a); and

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

(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 3.K.10(16).

#### *Miscellaneous provisions*

#### **Transfers-in: transitional provision**

**2.K.13.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) commenced a period of pensionable 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 N1 (member’s right to transfer accrued rights to benefits to this Section of the scheme) of the 2011 Regulations.

(2) If—

- (a) the Scottish Ministers accept the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation N1(5) of the 2011 Regulations; and
- (b) that payment is received by the Scottish Ministers 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 is to 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 Scottish Ministers on, or after, the day on which the person’s option to join this Section of the scheme is received—

- (a) the Scottish Ministers may accept that payment under this Section of the scheme—
  - (i) without requiring the Optant to make an application under regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme); and
  - (ii) subject to such other conditions as the Scottish Ministers may require; and

- (b) if the Scottish Ministers accept 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 is to be calculated as described in paragraph (4).
- (4) Subject to paragraph (5) 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) is to be calculated in accordance with regulation 2.F.11 (calculation of transferred-in pensionable service); and
  - (b) the starting day for the purposes of regulation 2.F.11(2) and (3) is the day that the Optant’s pensionable employment referred to in paragraph (1) commenced.
- (5) If the transfer value payment is accepted by the Scottish Ministers under the public sector transfer arrangements—
  - (a) regulation 2.F.12 (meaning of “capped transferred-in service”) applies 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 2.F.12(2) to the service that the member is entitled to count under regulation 2.F.10(2)(a) (acceptance of transfer value payments) must be read as a reference to the service the Optant is entitled to count under paragraph (4).

#### **2008 Section Optants: transitional upper tier ill health pension**

- 2.K.14.**—(1) This regulation applies to a 2008 Section Optant who—
- (a) has submitted a form AW8 (or such other form as the Scottish Ministers are 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 E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations; and
  - (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant’s option to join this Section of the scheme.
- (2) Subject to paragraph (5) if the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 2.D.8(3) (“an upper tier 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 must be increased by the enhancement period determined in accordance with paragraph (3) (“the transitional enhancement period”); and
  - (b) the transitional enhancement period must 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 2.D.8(6).
- (3) Subject to paragraph (4), in this regulation—
- “the transitional enhancement period” means two-thirds of the Optant’s assumed pensionable service; and
- “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 age 60.
- (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 must be the lesser of—
- (a) 4 years pensionable service; and

(b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching age 60.

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 2.D.8 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**

**2.K.15.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) submits a form AW8 (or such other form as the Scottish Ministers are 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 2.D.8 (early retirement on ill health: active members and non-contributing members); and
- (b) that form and supporting medical evidence is received by the Scottish Ministers before the end of the period of one year commencing on the day the Scottish Ministers received the Optant’s option to join this Section of the scheme.

(2) Subject to paragraph (3) if, following a consideration of the form and medical evidence referred to in paragraph (1) an Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(3) (“an upper tier ill health pension”)—

- (a) that Optant’s service must be increased by the enhancement period determined in accordance with whichever of regulation 2.K.14(3) or (4) apply to the Optant; and
- (b) the transitional enhancement period must 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 2.D.8(6).

(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

**Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill health retirement under the 1995 Section**

**2.K.16.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) submitted a form AW8 (or such other form as the Scottish Ministers are 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 E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations; and
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant’s option to join this Section of the scheme.

(2) If following a consideration of the form and medical evidence referred to in paragraph (1) an Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(2) (early retirement on ill health: active members and non-contributing members) (“a lower tier 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 E4 (re-assessment of ill health condition determined under regulation E3) of

the 2011 Regulations that the Optant may ask the Scottish Ministers to consider whether that Optant subsequently meets the upper tier condition under that regulation, that Optant must be entitled to a re-assessment of entitlement to an ill health pension determined under regulation 2.D.9 (re-assessment of entitlement to an ill health pension) in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 2.D.8(3) (a) at the date of the Scottish Ministers' review, "permanently" means until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9 the Scottish Ministers determine that the Optant meets the condition in regulation 2.D.8(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a lower tier ill health pension; and
- (b) becomes entitled to an upper tier ill health pension under regulation 2.D.8 but must be calculated in accordance with paragraph (5).

(5) Subject to paragraph (6), for the purpose of calculating the upper tier ill health pension referred to in paragraph (4)—

- (a) the Optant's service must be increased by the transitional enhancement period determined in accordance with whichever of regulation 2.K.14(3) or (4) apply to that Optant; and
- (b) the transitional enhancement period must 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 2.D.8(6).

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

- (a) regulation 2.K.14(3) must be read as if the definition of "the Optant's assumed pensionable service" included the words "from the date of the Scottish Ministers' determination under regulation 2.D.9" after "continued in service"; and
- (b) references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

**Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill health retirement under this Section of the scheme within a year of joining this Section of the scheme**

**2.K.17.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) submits a form AW8 (or such other form as the Scottish Ministers are 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 2.D.8 (early retirement on ill health: active members and non-contributing members);
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the end of the period of one year commencing on the day the Scottish Ministers 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 lower tier ill health pension under regulation 2.D.8; and
  - (ii) at the time the Optant is awarded a pension under that regulation the Scottish Ministers give the Optant notice in writing in accordance with regulation 2.D.9(1) (b) (re-assessment of entitlement to an ill health pension) 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 2.D.8(3) (a) at the date of such a consideration.

(2) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9, the Scottish Ministers determine that the Optant meets the condition in 2.D.8(3) (a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a lower tier ill health pension; and
- (b) becomes entitled to an upper tier ill health pension under regulation 2.D.8 but which must be calculated in accordance with paragraph (3).

(3) Subject to paragraph (4) for the purpose of calculating the upper tier ill health pension referred to in paragraph (2)—

- (a) the Optant's service must be increased by the transitional enhancement period determined in accordance with whichever of regulation 2.K.14(3) or (4) applies to the Optant; and
- (b) the transitional enhancement period must 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 2.D.8(6).

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

- (a) regulation 2.K.14(3) must be read as if the definition of "the Optant's assumed pensionable service" included the words "from the date of the Scottish Ministers' determination under regulation 2.D.9" after "continued in service"; and
- (b) references to the "enhancement period" in regulation 2.D.8 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**

**2.K.18.**—(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 regulation 2.K.5(3) (treatment of additional service).

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations;
- (b) that form and supporting medical evidence was received by the Scottish Ministers 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 Q5 (paying by regular additional contributions) of the 2011 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a), that Optant becomes entitled to a lower tier ill health pension or upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) 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 is not entitled to count a period of pensionable service under regulation 2.K.5 and—

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect that period of additional service must be returned to the Optant in accordance with regulation Q7(2) (part payment for additional service or unreduced retirement lump sum) of the 2011 Regulations; and
- (ii) regulation 2.K.5(7) does not apply.

(3) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E3 of the 2011 Regulations;
- (b) that form and supporting medical evidence was received by the Scottish Ministers 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 Q5 of the 2011 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a), that Optant becomes entitled to a lower tier ill health pension or an upper tier ill health pension under regulation 2.D.8, 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 2.K.5, that Optant is also 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 must be a period of service equal to the difference between—

- (a) the period of service the Optant is entitled to count under regulation 2.K.5; and
- (b) the period of service the Optant elected to purchase under regulation Q1 (right to buy additional service) of the 2011 Regulations calculated in accordance with regulation Q7(3) and (4) (part payment for additional service or unreduced retirement lump sum) of the 2011 Regulations and as if the member had become entitled to a pension under regulation E3 of those Regulations on the day the Scottish Ministers received that person's option to join this Section of the scheme.

(5) For the purposes of calculating the Optant's benefits under this Section of the scheme, the pensionable service the Optant is entitled to count under paragraph (4) is to be added to the service the member is entitled to count under regulation 2.K.3(3).

**Circumstances in which a member of the 1995 Section may defer making an option to join this Section of the scheme under regulation 2.K.2**

**2.K.19.**—(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 regulation P2(3) (absence because of illness or injury) of the 2011 Regulations;
- (b) submitted a form AW8 (or such other form as the Scottish Ministers 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 E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations;
- (c) that form and supporting medical evidence was received by the Scottish Ministers—
  - (i) before the date on which a comparative statement of benefits under the 1995 Section and this Section of the scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 2.K.2 (options for a member of the 1995 Section to join this Section of the scheme); or
  - (ii) such a statement has been issued to that person, before the date specified by the Scottish Ministers 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) Subject to paragraph (4), the option under paragraph (2) may only be exercised if—

- (a) the person gives notice in writing to the scheme administrator in such form as the Scottish Ministers require; and
- (b) that notice is received by the scheme administrator within a period of four months starting with the day on which—
  - (i) that person is sent a written notification of the Scottish Ministers' decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the lower tier or the upper tier condition specified in regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations (“the first decision”);
  - (ii) that person is sent a written notification of the Scottish Ministers' decision in respect of the stage 1 dispute (“stage 1 decision”);
  - (iii) that person is sent a written notification of the Scottish Ministers' decision in respect of the stage 2 dispute (“stage 2 decision”); or
  - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman.

(4) Paragraph (3) must cease to apply to any person if at any time that person—

- (a) returns to NHS employment; or
- (b) claims a pension under regulation E11 (early retirement pension (with actuarial reduction)) or E12 (preserved pension) of the 2011 Regulations.

(5) In this regulation—

“stage 1 dispute” means a request made to the Scottish Ministers for a review of the first decision under section 50 (resolution of disputes) of the 1995 Act, that is received by the Scottish Ministers within a period of 6 months starting with the date on which that person was sent written notification of the original decision;

“stage 2 dispute” means a request made to the Scottish Ministers to review the stage 1 decision under section 50 of the 1995 Act that is received by the Scottish Ministers within a period of 6 months starting with the day on which that person is sent a written notification of a stage 1 decision; and

“final determination by the Pensions Ombudsman” means a written determination under section 151 (determinations of the Pensions Ombudsman) of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage 2 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 2 decision.

## **Nominations and notices accepted by the Scottish Ministers under the 2011 Regulations to apply under Chapter 2.E**

**2.K.20.**—(1) This regulation applies if—

- (a) the Scottish Ministers have 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 member of the 1995 Section; and
- (b) on the day that the Scottish Ministers receive 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 F5 (payment of lump sum) of the 2011 Regulations in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 (lump sum on death) of the 2011 Regulations;
  - (b) a notice provided for the purposes of regulation F5(3)(a) of the 2011 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 F1 to F4 of the 2011 Regulations;
  - (c) a notice provided for the purpose of regulation G14 (surviving nominated partner's pension) of the 2011 Regulations 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) must be treated—
- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.22 (payment of lump sums or pensions on death);
  - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.22 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 Scottish Ministers as a declaration for the purposes of regulation 2.E.2 (meaning of "surviving nominated partner").

### **Late payment of pension with actuarial increase for a 2008 Section Optant**

**2.K.21.**—(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 2.D.1 (normal retirement pensions) after reaching age 65.

(2) Subject to paragraph (6), 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 2.K.3 (service and pensionable earning credited from the 1995 Section);
  - (ii) regulation 2.K.5 (treatment of additional service) (if any); and
  - (iii) this Section of the scheme on or after 1st April 2008 but before reaching age 65; and
- (b) any contributions paid under regulation 2.C.8 (periodical contributions), 2.C.10 (lump sum contribution) or 2.C.11 (lump sum contributions by employing authority) before reaching that age,

is to be increased in accordance with paragraph (4).

(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 2.K.12; and
- (b) before any commutation under regulation 2.D.14 (option to exchange part of pension).

(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 Scottish Ministers 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 age 65 before the Optant becomes entitled to immediate payment of the pension; and

(b) the life expectancy of the Optant.

(6) The increase must 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 2.D.3 (late payment of pension with actuarial increase).

### **2008 Section Optants who are in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations**

**2.K.22.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) is entitled to a lower tier ill health pension under regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
- (b) becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) 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 2.D.8, to—

- (a) a lower tier ill health pension; or
- (b) an upper tier ill health pension,

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

(4) Subject to paragraph (5) and regulations 2.K.14 to 2.K.18, the benefits mentioned in paragraph (3) are—

- (a) the member's lower tier ill health pension under regulation E3 of the 2011 Regulations in respect of the member's earlier 1995 Section service; and
- (b) a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of the member's later 2008 Section service.

(5) If the Optant—

- (a) ceases to be entitled to a lower tier ill health pension in respect of the earlier 1995 Section service;
- (b) becomes entitled to an upper tier ill health pension in respect of that earlier 1995 Section service in accordance with regulation E4 (re-assessment of ill health condition determined under regulation E3) of the 2011 Regulations; and
- (c) becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier 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) an upper tier ill health pension paid in accordance with regulation E4 (re-assessment of ill health condition determined under regulation E3) of the 2011 Regulations in respect of the earlier 1995 Section service; and
- (b) a lower tier 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 lower tier ill health pension under regulation E3 of the 2011 Regulations**

**2.K.23.**—(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant’s death—

- (a) is entitled to a lower tier ill health pension under regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations 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) must be—

- (a) calculated in accordance with whichever of paragraph (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 2.E.17 (amount of lump sum: single capacity members and recent leavers).

(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 2.D.5 (partial retirement: members aged at least 55), the lump sum referred to in paragraph (2)(a) is an amount equal to 5 times the annual rate of pension—

- (a) payable under regulation 2.D.8(5) (upper tier ill health pension) if the deceased Optant had not reached age 65; or
- (b) payable under regulation 2.D.1 (normal retirement pensions) if the deceased Optant had reached age 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 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to 5 times the annual rate of pension—

- (a) payable under regulation 2.D.8(5) (upper tier ill health pension), if the deceased Optant had not reached age 65; or
- (b) payable under regulation 2.D.1 (normal retirement pensions), if the deceased Optant had reached age 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 2.D.5, the lump sum referred to in paragraph (2)(a) must be determined by the Scottish Ministers 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 lower tier ill health pension under regulation E3 of the 2011 Regulations.**

**2.K.24.**—(1) This regulation applies to a 2008 Section Optant (“a deceased Optant”) who, in respect of service in this Section of the scheme (“the later active 2008 Section service”), 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 lower tier ill health pension under regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations 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 regulation 2.E.10(3) (amount of surviving child’s pension: active members and non-contributing members) 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 2.D.8(5) (upper tier ill health pension) if the deceased Optant had become entitled to an upper tier ill health pension at that date; and
- (ii) the deceased Optant’s later 2008 Section service as an active member plus the difference between—
- (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service as an active member; and
- (bb) 10 years pensionable service,
- where the amount of service in sub-head (aa) is less than that specified in sub-head (bb); and
- (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.
- (3) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of regulation 2.E.11(3) (amount of surviving child’s pension: pensioner members) 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 Optant 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 Optant’s earlier 1995 Section service and the later 2008 Section service; and
- (ii) 10 years pensionable service,
- where the amount of service in head (i) is less than that specified in head (ii).
- (4) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of regulation 2.E.12(3) (amount of surviving child’s pension: deferred members) means—
- (a) if the deceased 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 2.E.10 (active member and non-contributing members) 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 would have been entitled if the deceased had become entitled to a pension under regulation 2.D.1 (normal retirement pensions) on the date of death (disregarding any additional pension); and

- (ii) 75% 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 that has been deferred plus the difference between—
  - (aa) the aggregate of the 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 sub-head (aa) is less than that specified in sub-head (bb).

## CHAPTER 2.L

### WAITING PERIOD JOINERS

#### **Application of Chapter 2.L**

**2.L.1.**—(1) This Chapter makes provision in relation to pensioner members of the 1995 Section of the scheme who are eligible to be members of this Section of the scheme in accordance with regulation 2.B.2(1)(b)(ii) (eligibility: transitional).

(2) A member of this Section of the scheme to whom this Chapter applies is referred to as a “Waiting Period Joiner”.

#### **Nominations and notices accepted by the Scottish Ministers under the 2011 Regulations to apply under Chapter 2.E**

**2.L.2.**—(1) This regulation applies if—

- (a) on the day a Waiting Period Joiner becomes an active member of this Section of the scheme—
    - (i) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of that Waiting Period Joiner; and
    - (ii) that Waiting Period Joiner has not revoked that nomination or notice; or
  - (b) at any time after a Waiting Period Joiner becomes an active member of this Section of the scheme, that Waiting Period Joiner gives a notice, nomination or declaration for the purposes of a regulation listed in the table at paragraph (4).
- (2) The nominations and notices referred to in paragraph (1)(a) are—
- (a) a nomination made in accordance with regulation F5 (payment of lump sum) of the 2011 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 (lump sum on death) of the 2011 Regulations;
  - (b) a notice provided for the purposes of regulation F5(3)(a) of the 2011 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 F1 to F4 of the 2011 Regulations;
  - (c) a notice provided for the purpose of regulation G14 of the 2011 Regulations (surviving nominated partner's pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the scheme a nomination or notice referred to in paragraph (1)(a) must be treated—



- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.22 (payment of lump sums or pensions on death);
  - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Scottish Ministers as a notice for the purposes of regulation 2.E.22 specifying that the Waiting Period Joiner's personal representatives are to receive any lump sum or pension on the death of that Joiner; and
  - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Scottish Ministers as a declaration for the purposes of regulation 2.E.2 (meaning of "surviving nominated partner").
- (4) A notice, nomination or declaration referred to in paragraph (1)(b) that is given by a Waiting Period Joiner for the purposes of a regulation listed in column 1 of the following table must be treated as a notice, nomination or declaration given for the purposes of the corresponding regulation in column 2.

**Table**

<i>Column 1</i>	<i>Column 2</i>
<i>The 2011 Regulations</i>	<i>These Regulations</i>
F5 (payment of lump sum)	2.E.22 (payment of lump sum or pension on death)
G14 (surviving nominated partner's pension)	2.E.2 (meaning of "surviving nominated partner")

**Waiting Period Joiners who are in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations**

- 2.L.3.—**(1) This regulation applies to a Waiting Period Joiner who—
- (a) is entitled to a lower tier ill health pension under regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations in respect of service in the 1995 Section ("the earlier 1995 Section service"); and
  - (b) becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill health pension under regulation 2.D.8 (active members and non-contributing members) in respect of service in this Section of the scheme ("the later 2008 Section service").
- (2) For the purposes of determining whether a Waiting Period Joiner can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.
- (3) A Waiting Period Joiner is entitled to the benefits set out in paragraph (4) if, on the termination of the later 2008 Section service, that Joiner becomes entitled to a lower tier ill health pension or an upper tier ill health pension under regulation 2.D.8 in respect of the later 2008 Section service.
- (4) Subject to paragraph (5), those benefits are—
- (a) a lower tier ill health pension under regulation E3 of the 2011 Regulations in respect of the member's earlier 1995 Section service; and
  - (b) a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of the member's later 2008 Section service.
- (5) A Waiting Period Joiner is entitled to the benefits set out in paragraph (6) where that Joiner—

- (a) ceases to be entitled to a lower tier ill health pension in respect of the earlier 1995 Section service;
  - (b) becomes entitled to an upper tier ill health pension in respect of that earlier 1995 Section service in accordance with regulation E4 (re-assessment of ill health condition) of the 2011 Regulations; and
  - (c) becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of the later 2008 Section service on the termination of that later service.
- (6) Those benefits are—
- (a) an upper tier ill health pension paid in accordance with regulation E4 of the 2011 Regulations in respect of the earlier 1995 Section service; and
  - (b) a lower tier ill health pension in respect of the later 2008 Section service.

### **Lump sum payable on the death of a Waiting Period Joiner**

**2.L.4.**—(1) This regulation applies to a Waiting Period Joiner who, on the date of that Joiner’s death, is an active or a non-contributing member in respect of service in this Section of the scheme (“the later 2008 Section service”).

(2) The lump sum payable on the death of a Waiting Period Joiner referred to in paragraph (1) must be calculated in accordance with whichever of paragraphs (3) to (6) applies to the Joiner, and must be paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of the Joiner’s later 2008 Section service under regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers).

(3) Where, at the date of the Waiting Period Joiner’s death, the Joiner was an active member who had not reached age 65 and who had not exercised the option under regulation 2.D.5 (partial retirement: members aged at least 55), the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 2.D.8(5) (early retirement on ill health) to which the deceased Joiner would have been entitled at that date, multiplied by 5.

(4) Where, at the date of the Waiting Period Joiner’s death, the Joiner was an active member who had reached age 65 and who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension payable under regulation 2.D.1 (normal retirement pensions) to which the deceased Joiner would have been entitled at that date, multiplied by 5.

(5) Where, at the date of the Waiting Period Joiner’s death, the Joiner was a non-contributing member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) is an amount equal to the annual rate of pension to which the Joiner would have been entitled under regulation 2.D.1 on the last day of the Joiner’s pensionable service, multiplied by 5.

(6) Where, at the date of the Waiting Period Joiner’s death, the Joiner was an active member or a non-contributing member who had exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2) must be determined by the Scottish Ministers after taking advice from the scheme actuary.

### **Children’s pensions payable on the death of a Waiting Period Joiner**

**2.L.5.**—(1) This regulation applies in respect of a Waiting Period Joiner’s service in this Section of the scheme where, at the date of the Joiner’s death, the Joiner was an active non-contributing pensioner or a deferred member who was entitled to a pension under the 2011 Regulations in respect of service in the 1995 Section (“the earlier 1995 Section service”).

(2) In the case of a deceased Waiting Period Joiner who at the date of the Joiner's death was an active or non-contributing member, "relevant service" for the purposes of regulation 2.E.10(4) (amount of surviving child's pension) has the meaning given in paragraph (3).

(3) "Relevant service" means—

(a) in the case of a deceased Waiting Period Joiner who at the date of the Joiner's death was an active member, the greater of—

(i) the pensionable service that Joiner was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) (upper tier ill health pension) if that Joiner had become entitled to an upper tier ill health pension at that date; and

(ii) that Joiner's later 2008 Section service as an active member plus the difference between—

(aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service as an active member; and

(bb) 10 years pensionable service,

where the amount of service in sub-head (aa) is less than that specified in sub-head (bb); and

(b) in the case of a deceased Waiting Period Joiner who at the date of that Joiner's death was a non-contributing member, the pensionable service that Joiner was entitled to count under this Section of the scheme on the date of that Joiner's death.

(4) In the case of a deceased Waiting Period Joiner who at the date of the Joiner's death was a pensioner member, "the basic death pension" for the purposes of regulation 2.E.11(3) (amount of surviving child's pension: pensioner members) has the meaning given in paragraph (5).

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

(a) 75% of the deceased Waiting Period Joiner's annual pension (disregarding any additional pension); and

(b) 75% of the annual pension (disregarding any additional pension) to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service plus the difference between—

(i) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service; and

(ii) 10 years pensionable service,

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

(6) In the case of a deceased Waiting Period Joiner, who at the date of the Joiner's death was a deferred member, "the basic death pension" for the purposes of regulation 2.E.12(3) (amount of surviving child's pension: pensioner members) has the meaning given in paragraph (7).

(7) The "basic death pension" means—

(a) if the deceased Waiting Period Joiner died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 2.E.10 had the Joiner died on the day that the Joiner ceased to be such a member (disregarding any additional pension); and

(b) if the deceased Waiting Period Joiner died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—

(i) 75% of the pension to which that Joiner would have been entitled if that Joiner had become entitled to a pension under regulation 2.D.1 (normal retirement pensions) on the date of death (disregarding any additional pension); and

- (ii) 75% of the annual pension to which that Joiner would have been entitled in respect of the aggregate of that Joiner's later 2008 Section service that has been deferred plus the difference between—
  - (aa) the aggregate of that Joiner's earlier 1995 Section service and the later 2008 Section service that has been deferred; and
  - (bb) 10 years pensionable service,where the amount of service in sub-head (aa) is less than that specified in sub-head (bb).