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STATUTORY INSTRUMENTS

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**2008 No. 654**

**NATIONAL HEALTH SERVICE,  
ENGLAND AND WALES**

**The National Health Service Pension  
Scheme (Amendment) Regulations 2008**

<i>Made</i>	- - - -	<i>11th March 2008</i>
<i>Laid before Parliament</i>		<i>11th March 2008</i>
<i>Coming into force</i>	- -	<i>1st April 2008</i>

The Secretary of State for Health makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2) and 12(1) and (2) of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup> with the consent of the Treasury<sup>(2)</sup>.

In accordance with section 10(4) of that Act, the Secretary of State has consulted such representatives of persons likely to be affected by these Regulations as appear to the Secretary of State to be appropriate<sup>(3)</sup>.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme (Amendment) Regulations 2008.

(2) These Regulations shall come into force on 1st April 2008 and shall have effect from 1st April 2008, except for regulation [F166(2) and (3)], which shall have effect from 1st April 2003.

(3) In these Regulations—

(a) an alpha-numerical reference to a regulation is a reference to a provision of the National Health Service Pension Scheme Regulations 1995<sup>(4)</sup> bearing that alpha-numeric;

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(1) 1972 c. 11. Section 10(1) was amended by sections 57 and 58 of, and Schedule 5 to, the National Health Service Reorganisation Act 1973 (c. 32) and by section 4(2) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7). Section 12(2) was amended by section 10(1) of the Pensions (Miscellaneous Provisions) Act 1990 (c. 7).

(2) See section 10(1) of the Superannuation Act 1972 and article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

(3) See section 10(4) of the Superannuation Act 1972.

(4) S.I. 1995/300 amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919 and 2007/2054 and 3280, and modified by S.I. 1996/971.

- (b) an alphabetical reference to a Part is a reference to a Part of those Regulations bearing that letter.

**F1** Words in reg. 1(2) substituted (31.3.2008) by [The National Health Service Pension Scheme \(Correction to Amendment\) Regulations 2008 \(S.I. 2008/906\)](#), regs. 1(2), **2(2)**

**Commencement Information**

**I1** Reg. 1 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation A2**

**2.** In regulation A2 (interpretation) insert the following definitions in the appropriate place in alphabetical order—

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

““section 9(2B) rights” has the same meaning as it has in the Occupational Pension Schemes (Contracting-out) Regulations 1996(5);”

““tax year” means any year beginning on 6th April and ending on 5th April the following year;”.

**Commencement Information**

**I2** Reg. 2 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation B2**

**3.** For regulation B2 (restrictions on membership) substitute—

**“Restrictions on membership**

**B2.—**(1) A person may not join the scheme if—

- (a) that person is—
  - (i) under the age of 16; or
  - (ii) over the age of 75; or
  - (iii) over the age of 70 on or before 31st March 2008;
- (b) that person is a special class officer over the age of 65;
- (c) that person is eligible to be an active member of a superannuation scheme established under section 1 or 9 of the Superannuation Act 1972 in respect of service in that scheme and is such a member;
- (d) that person holds an honorary appointment and does not at the same time hold any other employment which entitles that person to join the scheme;
- (e) that person is not a practitioner and is employed by a GDS or PDS contractor;
- (f) that person, on or after 1st April 2008, enters NHS employment for the first time and has not previously been a member of the scheme;

- (g) that person, on or after 1st April 2008, returns to NHS employment and was entitled to a refund of contributions under regulation L2 when that person last left employment, unless paragraph (4), but not paragraph (5), of regulation L4 (early leavers returning to pensionable employment) applies to that person;
  - (h) that person is a person who—
    - (i) leaves pensionable employment on, or after, 1st April 2008; and
    - (ii) before returning to NHS employment, exercises the member’s right to transfer out all of that person’s benefits in the scheme in accordance with regulation M1 or M2;
  - (i) that person is a person who has been a member of the National Health Service Pension Scheme governed by the National Health Service Pension Regulations 2008(6).
- (2) In paragraph (1)—
- (a) “NHS Pension Scheme 2008” includes a corresponding health service scheme;
  - (b) “pensionable employment” includes employment that qualified the member for a benefit under a health service scheme.
- (3) The Secretary of State may permit a person who would otherwise not be permitted to join the scheme in accordance with sub-paragraphs (1)(f) to (h) to do so if—
- (a) that person’s employment is transferred to an employing authority by virtue of a transfer of undertakings or by virtue of arrangements equivalent to a transfer of undertakings (whether or not the transferring employer is in the public sector provided that person’s employment was originally transferred out of the public sector);
  - (b) the employment from which the member is transferred—
    - (i) qualified the member for benefits under an occupational pension scheme, and
    - (ii) the rules of that scheme (in the opinion of the Secretary of State) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years.
- (4) The reference in paragraph (3)(a) to arrangements equivalent to a transfer of undertakings is to arrangements—
- (a) which the Secretary of State considers to be equivalent to the transfer of an undertaking, and
  - (b) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of an undertaking.
- (5) For the purposes of paragraph (3)(b)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits upon, or prior to, attaining the age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision—
- (a) as to early retirement on the grounds of ill health, redundancy or otherwise, or
  - (b) for benefits to be reduced for early payment.
- (6) Before permitting a person referred to in paragraph (3) to join the scheme the Secretary of State shall take advice from the Scheme Actuary.”.

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**Commencement Information**

**I3** Reg. 3 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation B3**

- 4.**—(1) Regulation B3 (restriction on further participation in the scheme) is amended as follows.
- (2) In paragraph (1) for “regulations B1(1) and B(2)”, substitute “regulation B1(1)”.
- (3) In paragraph (2) after “E2(11)”, insert “or E2A(11)”.

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**Commencement Information**

**I4** Reg. 4 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation C1**

**5.**—(1) Regulation C1 (meaning of pensionable pay and final year’s pensionable pay) is amended as follows.

- (2) After paragraph (1) insert—
- “(1A) Paragraphs (2) to (4) and (5) to (7) apply in respect of pensionable employment before 1st April 2008.”.
- (3) After paragraph (4) insert—
- “(4A) Paragraphs (4B) to (7) apply in respect of pensionable employment on, or after, 1st April 2008.
- (4B) Subject to paragraph (4C), pensionable pay in excess of the permitted maximum will not be ignored.
- (4C) Pensionable pay in excess of the permitted maximum will be ignored in respect of additional service being bought under regulation Q1 and an unreduced lump sum being brought under regulation Q2 if—
- (a) the member elected to make such a purchase under regulation Q6(3) from a birthday falling before 1st April 2008; and
- (b) the member’s pensionable pay was restricted under paragraph (2) of this regulation before that date; or
- (c) the member’s pensionable pay would have been restricted under that paragraph if it had exceeded the permitted maximum.”.
- (4) In paragraph (6) for “In these”, substitute “Subject to paragraph (6A), in these”.
- (5) After paragraph (6) insert—
- “(6A) If the pensionable pay of a member credited with a period of pensionable service under regulation N2 (transfers made under the Public Sector Transfer Arrangements) or regulation N4 (special terms for transfers in (bulk transfers etc)) has exceeded the permitted maximum and either—
- (a) paragraph 20 of Schedule 6 to the Finance Act 1989(7) applied to the member without the modification made by regulation 5 of the Retirement Benefits Schemes (Continuation of Rights of Members of Approved Schemes)

Regulations 1990(8) in respect of benefits derived from all or part of that service under another scheme; or

- (b) any equivalent scheme provision applied to the member in respect of all or part of that service when that person was a member of the scheme from which the transfer was accepted,

that excess shall be ignored for the purposes of calculating the final year's pensionable pay under paragraph (6) in respect of the corresponding period of pensionable service credited under regulation N2 or N4.”.

- (6) For paragraph (7) substitute—

“(7) In this regulation, “permitted maximum” means—

- (a) in relation to any tax year before the tax year 2006-07, the figure specified for that tax year in an order made under section 590C of the Income and Corporation Taxes Act 1988; or
- (b) subject to paragraphs (8) and (9), the figure for any later year is £108,600.

(8) If the retail prices index for the month of September preceding the tax year 2007-08 or any later tax year is higher than it was for the previous September, the figure for that year shall be 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.

(9) If the retail prices index for the month of September preceding the tax year 2007-08 or the month of September preceding any later tax year is not higher than it was for the previous September, the figure for that year shall be the same as for the previous tax year.”.

#### **Commencement Information**

**I5** Reg. 5 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### **Amendment of regulation C2**

**6.—**(1) Regulation C2 (meaning of pensionable service) is amended as follows.

- (2) After paragraph (2)(d) insert—

“(e) in the case of a member who is not a special class officer, any period of pensionable service in excess of 40 years that relates to a period before—

- (i) the member's 60th birthday; and
- (ii) 1st April 2008.”.

- (3) For paragraph (3) substitute—

“(3) Subject to paragraph (2), the benefits described in these regulations will be calculated by reference to a maximum of—

- (a) 45 years pensionable service in the case of a member who is not a special class officer;

- (b) 45 years pensionable service (of which only 40 years may relate to the period before the member reaches age 55) in the case of a member who is a special class officer,

and if the member's pensionable service exceeds these limits, the amount of the excess will be ignored.”.

#### Commencement Information

**I6** Reg. 6 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### Amendment of regulation D1

7.—(1) Regulation D1 (contributions by members) is amended as follows.

(2) For paragraphs (1) and (2) substitute—

“(1) Each member in pensionable employment must contribute to the scheme in accordance with the following paragraphs of this regulation.

(1A) For the purposes of determining the relevant contribution rate for the 2008-2009 scheme year a member who meets one of the conditions referred to in paragraph (1B) must contribute 5 per cent of the member's pensionable pay.

(1B) The conditions referred to in paragraph (1A) are—

- (a) the member is in pensionable employment on both 31st March 2008 and 1st April 2008 with the same employer and that employment is by way of manual labour,
- (b) the member returns to pensionable employment on or after 1st April 2008 and both that employment and the period of pensionable employment immediately preceding that employment is by way of manual labour.

(1C) For the purposes of determining the relevant contribution rate for the 2008-2009 scheme year paragraph (1D) applies to a member who does not meet any of the conditions referred to in paragraph (1B).

(1D) For the 2008-2009 scheme year, a member whose pensionable pay falls into a pay band specified in column 1 of the following table must contribute the percentage of the member's pensionable pay specified in column 2 of that table in respect of that amount.

<i>Column 1</i>	<i>Column 2</i>
<i>Pay band</i>	<i>Contribution percentage rate</i>
Up to £19,682	5%
£19,683 to £65,002	6.5%
£65,003 to £102,499	7.5%
£102,500 to any higher amount	8.5%

(2) The Secretary of State may make a determination substituting any or all of the pay bands or contribution percentage rates specified in paragraphs (1A) and (1D) with effect from a date specified in the determination.

(2A) Before making a determination under paragraph (2), the Secretary of State must consider—

- (a) the advice of the Scheme Actuary, and

- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(2B) For the purposes of this regulation—

- (a) “primary employment” means a single pensionable employment for which an employing authority specifies the member’s working hours or working patterns;
- (b) “zero hours contract” means pensionable employment in respect of a contract under which—
  - (i) an employing authority does not guarantee to provide work for the member;
  - (ii) there are no specified working hours or working patterns;
  - (iii) the member is paid only for work actually done under it.

(2C) For the purposes of determining the relevant contribution rate for the 2008-2009 scheme year paragraphs (2D) to (2J) apply to a member who is in pensionable employment with the same employing authority on both 31st March 2008 and 1st April 2008.

(2D) For the purposes of paragraphs (2E) to (2J)—

- (a) a member shall be regarded as being in pensionable employment throughout the 2007-2008 scheme year regardless of any period in that year during which the member continues to be employed by the same employer but does not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay, contributions for any period referred to in (a) shall be deemed to have been paid;
- (c) the amount of pensionable earnings determined in accordance with those paragraphs shall be rounded down to the nearest whole pound;
- (d) if a member holds two or more pensionable employments at the same time—
  - (i) the determinations referred to in paragraphs (2E) to (2J) shall apply to each such employment separately; and
  - (ii) each such employment shall be treated separately for the purpose of paying contributions.

(2E) If a member—

- (a) was in pensionable employment with an employing authority on a whole-time basis throughout the 2007-2008 scheme year; and
- (b) is employed by that authority on 1st April 2008,

the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) 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 that year.

(2F) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis or under a zero hours contract throughout the 2007-2008 scheme year; and
- (b) is employed by that authority on 1st April 2008,

the amount of the member’s pensionable pay shall be determined by reference to the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment during that year.

(2G) 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 2007-2008 scheme year; and

(b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be the aggregate of the member's pensionable pay received during that year in respect of the member's whole-time employment and the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment for that period in respect of the member's part-time employment.

(2H) If a member—

(a) commences pensionable employment with an employing authority on a whole-time basis during the 2007-2008 scheme year; and

(b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be determined by the formula—

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

where

RPP is the pensionable pay received in respect of that employment during the 2007-2008 scheme year;

NDPE is the number of days of pensionable employment with that employer during the 2007-2008 scheme year.

(2I) If a member—

(a) commences pensionable employment with an employing authority on a part-time basis or under a zero hours contract during the 2007-2008 scheme year; and

(b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be determined by the formula—

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

where

CWTE is the amount the Secretary of State determines would have been paid for that employment during the 2007-2008 scheme year in respect of a single comparable whole-time employment

NDPE is the number of days of pensionable employment with that employer during the 2007-2008 scheme year.

(2J) If a member—

(a) commences pensionable employment with an employing authority during the 2007-2008 scheme year and has since been employed on both a whole-time and part-time basis; and

(b) is employed by that authority on 1st April 2008,

the amount of the member's pensionable pay shall be 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 2007-2008 scheme year;



CWTE is the amount the Secretary of State determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer during the 2007-2008 scheme year;

NDPE is the number of days of pensionable employment with that employer during the 2007-2008 scheme year.

(2K) If a member commences employment under a zero hours contract during the 2008-2009 scheme year, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2Q).

(2L) Subject to paragraph (2R), if a member—

- (a) commences primary employment at any time during the 2008-2009 scheme year; and
- (b) does not have a previous primary pensionable employment during that scheme year in respect of which the member paid contributions under this regulation,

the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2Q).

(2M) If, at any time during the 2008-2009 scheme year, a member who is in a primary employment ("the earlier employment") commences a further primary employment ("the later employment") that is held concurrently with the earlier employment, the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (2Q).

(2N) If a member—

- (a) ceases to be in a primary employment ("the earlier employment") that is not held concurrently with another primary employment at any time during the 2008-2009 scheme year,
- (b) after so ceasing next commences a further primary employment ("the later employment"), and
- (c) that further employment is not held concurrently with another primary employment,

the member shall continue to pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment.

(2O) If a member—

- (a) at any time during the 2008-2009 scheme year ceases to be in two or more primary employments that were at one time held concurrently with each other ("the earlier employments");
- (b) those earlier employments did not all cease on the same day; and
- (c) that member next commences a further primary employment ("the later employment"),

the member shall continue to pay contributions in respect of the later employment at the same rate as that which applied to whichever of the earlier employments was the last to cease.

(2P) If a member—

- (a) at any time during the 2008-2009 scheme year ceases to be in two or more primary employments that were at one time held concurrently with each other (“the earlier employments”);
- (b) the last two or more of those earlier employments ceased on the same day;
- (c) after the cessation of those earlier employments, next commences a further primary employment (“the later employment”), and
- (d) that further primary employment is not held concurrently with another primary employment,

the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay determined in accordance with paragraph (2Q).

(2Q) Where paragraph (2K), (2L), (2M) or (2P) apply the Secretary of State shall 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 estimates will be payable to the member in respect of that employment during the 2007-2008 scheme year

NDPE is the number of days of pensionable employment from the date employment commences to the end of the 2008-2009 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 (a) being the member’s pensionable pay for the purposes of this regulation if the further employment is whole-time employment and the amount determined under (b) being the member’s pensionable pay for the purposes of this regulation if the further employment is part-time employment.

(2R) If a member—

- (a) at any time during the 2008-2009 scheme year is in pensionable employment in respect of which he pays contributions in accordance with paragraph (10) of Schedule 2 (“the earlier employment”);
- (b) ceases all such earlier pensionable employments;
- (c) after so ceasing, next commences a primary employment which is the first primary employment held by the member during the 2008-2009 scheme year (“the later employment”),

the member shall continue to pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment or, if there is more than one earlier employment, at the same rate as that which applied to whichever of those earlier employments was the last to cease.

(2S) Paragraph (2R) shall not apply if, during the 2008-2009 scheme year, the member—

- (a) has pensionable employment both as a general medical practitioner and a dentist performer; and
- (b) ceases both of those employments on the same day.

(2T) If none of paragraphs (2E) to (2R) apply—

- (a) the Secretary of State must determine the amount of the member’s pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (2A), have regard to the pensionable pay attributable to pensionable employment comparable to the member’s employment, prevailing pay scales and prevailing rates of pensionable allowances, and
- (b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (1D) in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay determined in accordance with paragraph (a).”.

(3) In paragraph (4)—

- (a) for “70”, substitute “75”;
- (b) omit “and reaches age 65”.

**Commencement Information**

**I7** Reg. 7 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation D2**

**8.**—(1) Regulation D2 (contributions by employing authorities) is amended as follows.

(2) In paragraph (3)(**9**)—

- (a) omit “or E4 (early retirement pension with employer’s consent)”;
- (b) in sub-paragraph (a) after “E3”, insert “(including any amount of pension that is exchanged for a lump sum under regulation E7)”;
- (c) in sub-paragraph (b)(**10**)—
  - (i) after “pension”, insert “(including any amount of pension that is exchanged for a lump sum under regulation E7)”, and
  - (ii) omit paragraph (i).

(3) In paragraph (7)(a) and (b), omit “or E4”.

**Commencement Information**

**I8** Reg. 8 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation E1**

**9.**—(1) Regulation E1 (normal retirement pension) is amended as follows.

(2) In paragraph (3)(**11**) for “70”, substitute “75”.

(3) After paragraph (3) insert—

“(4) Subject to paragraph (5), where a member who leaves pensionable employment on or after 1st April 2008 becomes entitled to a pension under this regulation, the Secretary of

(9) Paragraph (3) was amended by [S.I. 2006/2919](#).

(10) Paragraph (7) was amended by [S.I. 2006/2919](#).

(11) Paragraph (3) was amended by [S.I. 2004/665](#) and [S.I.2006/2919](#).

State may discharge the Secretary of State's liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act;
- (b) with the lump sum rule.

(5) A lump sum payment under paragraph (4) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

(6) For the purposes of paragraph (5), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.

(7) The amount of the lump sum payable under paragraph (4)—

- (a) will be equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
- (b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of a pension payable under regulation E7.

(8) For the purposes of calculating the amount of the lump sum payable under paragraph (7), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of a further lump sum payable under that regulation.”.

#### Commencement Information

**I9** Reg. 9 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### Amendment of regulation E2

**10.**—(1) Regulation E2 (early retirement pension (ill health)) is amended as follows.

(2) Before paragraph (1) insert—

“(A1) This regulation applies to a member who—

- (a) retires from pensionable employment on or after 1st April 2008—
  - (i) who submitted Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form, and
  - (ii) that form was received by the Secretary of State before 1st April 2008; or
- (b) returns to employment which attracts a pension in accordance with paragraph (11).”.

(3) In paragraph (1) after “A member”, insert “to whom this regulation applies”.

(4) In paragraph (10)(b) after “reduction under regulation E6(3)”, insert “and the lump sum in place of part of pension payable under regulation E7”.

(5) After paragraph (11) insert—

“(12) For the purposes of calculating the amount of lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of further lump sum payable under that regulation.”.

**Commencement Information**

**I10** Reg. 10 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Insertion of new regulations E2A, E2B and E2C**

**11.** After regulation E2 insert—

**“Ill health pension on early retirement**

**E2A.**—(1) This regulation applies to a member who—

- (a) retires from pensionable employment on or after 1st April 2008;
- (b) did not submit Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form pursuant to regulation E2 which was received by the Secretary of State before 1st April 2008, and
- (c) is not in receipt of a pension under regulation E2.

(2) A member to whom this regulation applies who retires from pensionable employment before normal benefit age shall be entitled to a pension under this regulation if—

- (a) the member has at least 2 years qualifying service or qualifies for a pension under regulation E1; and
- (b) the member’s employment is terminated because of physical or mental infirmity as a result of which the member is—
  - (i) permanently incapable of efficiently discharging the duties of that employment (the “tier 1 condition”); or
  - (ii) permanently incapable of regular employment of like duration (the “tier 2 condition”) in addition to meeting the tier 1 condition.

(3) Subject to paragraph (4), the pension to which a member is entitled—

- (a) upon satisfaction of the tier 1 condition (“the tier 1 pension”), or
- (b) upon satisfaction of the tier 2 condition in addition to meeting the tier 1 condition (“the tier 2 pension”),

will be calculated as described in regulation E1.

(4) Subject to paragraphs (5) and (6), if the member meets the tier 2 condition in addition to meeting the tier 1 condition, the pensionable service on which the pension is based will be increased by two-thirds of the pensionable service the member could have completed had he stayed in pensionable employment until normal benefit age.

(5) If the member’s employment is terminated on or before 31st March 2016, the minimum amount by which the member’s pensionable service will be increased under paragraph (4) will be the lesser of—

- (a) 4 years pensionable service; and
- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until normal benefit age.

(6) To the extent that any increase under paragraph (4) or (5) would cause a member’s pensionable service to exceed the limit provided for in regulation C2(3) (meaning of pensionable service), the amount of any excess will be reduced accordingly.

(7) Subject to paragraph (8), where a member becomes entitled to a pension by virtue of meeting the tier 2 condition, the Secretary of State may discharge her liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.

(8) A lump sum payment under paragraph (7) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

(9) For the purpose of paragraph (8), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.

(10) The amount of the lump sum payable under paragraph (7)—

- (a) will be equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
- (b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of the pension payable under regulation E7.

(11) The employment of a member to whom a pension is payable under this regulation may be pensionable under the scheme if he is under age 50—

- (a) on the date the member returns to NHS employment if the member became entitled to receive a pension under a tier 1 condition on the day the member retired from pensionable employment; or
- (b) on the day after the protection period in regulation E2C(6)(b) ends if—
  - (i) the member became entitled to receive a pension under a tier 2 condition on the day the member retired from pensionable employment, and
  - (ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation; or
- (c) on the day after the protection period in regulation E2C(6)(b) ends—
  - (i) the member became entitled to receive a pension under a tier 2 condition in place of a pension under a tier 1 condition on the date of the Secretary of State's determination under regulation E2B, and
  - (ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation.

(12) For the purposes of calculating the amount of the lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of a further lump sum payable under that regulation.

(13) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), the Secretary of State shall have regard to the factors in paragraph (15) (no one of which shall be decisive) and disregard the member's personal preferences for or against engaging in that employment.

(14) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (2)(b)(ii), the Secretary of State shall have regard to the factors in paragraph (16) (no one of which shall be decisive) and disregard the factors in paragraph (17).

- (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) 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 Secretary of State considers appropriate.
- (16) The factors to be taken into account for paragraph (14) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having 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 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 Secretary of State considers appropriate.
- (17) The factors to be disregarded for paragraph (14) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (18) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers—
- (a) that it would be reasonable for the member to refuse,

- (b) would provide no benefit to restoring the member’s capacity for—
    - (i) efficiently discharging the duties of the member’s employment under paragraph (2)(b)(i), or
    - (ii) regular employment of like duration under paragraph (2)(b)(ii), before the member reaches normal benefit age; and
  - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;
- “permanently” means the period until normal benefit age; and
- “regular employment of like duration” means—
- (a) in the case of a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member’s current pensionable service as a non-GP provider; and
  - (b) in all other cases, where prior to retiring from employment that is pensionable the member was employed—
    - (i) on a whole-time basis, regular employment on a whole-time basis;
    - (ii) on a part-time basis, regular employment on a part-time basis,
 regard being had to the number of hours, half-days and sessions the member worked in that employment..

### **Re-assessment of ill health condition determined under regulation E2A**

**E2B.**—(1) This regulation applies to a member in receipt of a tier 1 pension under regulation E2A.

(2) A member to whom this regulation applies may ask the Secretary of State to consider whether the member subsequently meets the tier 2 condition if—

- (a) by notice in writing at the time of award of the pension, the Secretary of State informed the member 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 satisfies the tier 2 condition at the date of such a consideration;
- (b) within that three year period the member provides further medical evidence to the Secretary of State relating to the satisfaction of the tier 2 condition at the date of the Secretary of State’s consideration; and
- (c) that further medical evidence relates to the same physical or mental infirmity that qualified the member for the member’s tier 1 pension.

(3) If, after considering the further medical evidence provided by a member, the Secretary of State determines that the member satisfies the tier 2 condition—

- (a) the Secretary of State shall pay from the date of that determination a tier 2 pension under regulation E2A(2) in place of the tier 1 pension being paid to that member; and
- (b) that pension shall be calculated in accordance with paragraph (4) of regulation E2A and as if that paragraph included the words “from the date of the Secretary of State’s determination under regulation E2B” after “employment”.

(4) Only one consideration of a member’s case may be undertaken under this regulation.



### **Further employment after a benefit is paid under regulation E2A**

**E2C.**—(1) This regulation applies to a member who—

- (a) is in receipt of a tier 2 pension under regulation E2A (“the original pension”); and
- (b) enters into further employment.

(2) Such a member shall be paid a tier 1 pension (“a substitute pension”) in place of the original pension—

- (a) from the next substitute pension payment date following the day on which the member’s annual earnings from further employment (whether in the NHS or otherwise) in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or
- (b) in the case of a member who enters into further NHS employment, from the next substitute pension payment date following the first day on which the member is so employed which falls after the anniversary of the member’s entry into the further NHS employment (whether or not that day is part of a continuous period of further NHS employment beginning with the member’s entry into that employment),

if sooner.

(3) A member who is in receipt of a substitute pension may ask the Secretary of State to consider reinstating the original pension if—

- (a) the member is under normal benefit age;
- (b) the member makes such a request in writing and provides supporting medical evidence to the Secretary of State before the end of the protection period; and
- (c) the member’s further employment is terminated before the end of the protection period.

(4) If, after considering that evidence, the Secretary of State determines that the member again satisfies a tier 2 condition in respect of the member’s earlier employment, the Secretary of State shall recommence paying, from the day after the date that the further employment is terminated, the original pension in place of the substitute pension.

(5) A member to whom this regulation applies who is in receipt of a tier 2 pension must—

- (a) notify the Secretary of State immediately and in writing if either of the following apply—
  - (i) the member’s annual earnings in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year;
  - (ii) the member is engaged in further NHS employment after the end of the protection period in paragraph (6)(b);
- (b) provide any other information in connection with the member’s earnings or further employment requested by the scheme administrator or any other person that the Secretary of State may specify.

(6) In this regulation “the protection period” means—

- (a) a period of one year beginning with the day on which the member’s annual earnings from further employment that is not NHS employment first exceed the lower earnings limit for national insurance contributions applicable to that year; or
- (b) a period of one year beginning with the first day the member enters into further NHS employment.”.

.....

**Commencement Information**

**I11** Reg. 11 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation E3**

**12.** After paragraph (1)(a)(ii) of regulation E3 (early retirement pension (redundancy etc additional provisions)) insert—

“(ia) returns to pensionable employment on or after that date that attracts a pension in accordance with regulation E2(11) or E2A(11);”.

.....

**Commencement Information**

**I12** Reg. 12 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Omission of regulation E4**

**13.** Regulation E4 (early retirement pension (employer’s consent)) is omitted.

.....

**Commencement Information**

**I13** Reg. 13 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Insertion of new regulation E7**

**14.** After regulation E6 (lump sum on retirement) insert—

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

**E7.—(1)** This regulation applies to a member whose pensionable employment ceases on or after 1st April 2008.

(2) A member may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

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

(4) An option under paragraph (2) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(5) In paragraph (4) “annual amount” in relation to a pension means the amount of the annual pension to which the member would be entitled under these regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971, calculated as at the time the payment would be first due.

(6) A member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act(12).

(7) If the member has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of a pension, paragraph (2) only applies to so much of the pension as

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(12) See, in particular, section 241 of, and paragraph 1 of Schedule 29 to, that Act.

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.

(8) The option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Secretary of State—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.”.

#### **Commencement Information**

**I14** Reg. 14 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### **Amendment of regulation F1**

**15.**—(1) Regulation F1 (member dies in pensionable employment) is amended as follows.

(2) In paragraph (1)(13) for “70”, substitute “75”.

(3) In paragraph (1A)(c) after “pay contributions”, insert “from a date that falls before 1st April 2008”.

(4) After paragraph (1A) insert—

“(1B) A lump sum on death shall be payable in accordance with regulation F5 where, on the day the member died, the member is—

- (a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions from a date that falls on or after 1 April 2008 pursuant to regulation D1(3) or (4) (contributions by members), and
- (d) except where regulations E2(11), E2A(11) or R4(6) apply, not in receipt of a pension under any of regulations E1 to E5.”.

#### **Commencement Information**

**I15** Reg. 15 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### **Amendment of regulation F2**

**16.**—(1) Regulation F2 (member dies after pension becomes payable) is amended as follows.

(2) In paragraph (2) for the words “the member's retirement lump sum” to the end, substitute—  
“the aggregate of—

- (a) the member's retirement lump sum paid under regulation E6 (lump sum on retirement), and
- (b) any lump sum paid to the member under regulation E7 (general option to exchange part of pension for lump sum).”.

(3) After paragraph (5) insert—

“(6) If a member who was in receipt of a substitute tier 1 pension under regulation E2C dies before the end of the protection period that applies to him under regulation E2C(6)

(a) or E2C(6)(b), the member’s pension referred to in paragraph (2) means that member’s original tier 2 pension.”.

**Commencement Information**

**I16** Reg. 16 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Substitution of regulation F5**

17. For regulation F5 (payment of lump sum) substitute—

**“Payment of lump sum**

**F5.**—(1) A lump sum under any of regulations F1 to F4 shall be paid in accordance with the following paragraphs.

(2) If a member dies without leaving a surviving partner and without having made a nomination in favour of another person, the lump sum shall be paid to the member’s personal representatives.

(3) If a member dies leaving a surviving partner and without having made a nomination in favour of another person, the lump sum shall be paid to that surviving partner unless—

- (a) the member has given notice to the Secretary of State that the surviving partner is not to receive the payment and has not revoked that notice; or
- (b) the surviving partner has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the surviving partner’s right to payment in respect of the member’s death shall be forfeited; or
- (c) payment to the surviving partner is not, in the opinion of the Secretary of State, reasonably practicable,

in which case the lump sum shall be paid to the member’s personal representatives.

(4) If a member dies having made a nomination in favour of one nominee (whether or not he also leaves a surviving partner), the lump sum shall be paid to that nominee unless—

- (a) the member has given notice to the Secretary of State revoking that nomination; or
- (b) the nominee has died before the payment could be made; or
- (c) the nominee has been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the member’s right to payment in respect of the member’s death shall be forfeited; or
- (d) payment to the nominee is not, in the opinion of the Secretary of State, reasonably practicable,

in which case the lump sum shall be paid to the member’s personal representatives.

(5) If a member dies having made a nomination in favour of two or more persons (whether or not he also leaves a surviving partner) and has not given notice to the Secretary of State revoking that notice, the lump sum shall be paid to those nominees, unless—

- (a) one or more of those nominees has—
  - (i) died before the payment could be made; or
  - (ii) been convicted of an offence specified in regulation T6(1A) and the Secretary of State has directed, as a consequence of that conviction, that the

member's or the nominee or nominees' right to payment in respect of the member's death shall be forfeited; or

- (b) the Secretary of State is of the opinion that payment to one or more of the nominees is not reasonably practicable,

in which case the percentage of the lump sum due to that nominee, or as the case may be, those nominees shall be paid to the member's personal representatives.

- (6) A nomination may only be made by a member—

- (a) who is in pensionable employment in the scheme at the time of making the nomination; or  
(b) whose pensionable employment in the scheme ceased on, or after, 1st April 2008.

- (7) A nomination shall specify one or more persons who may be—

- (a) an individual;  
(b) a body corporate;  
(c) an unincorporated body; or  
(d) the member's personal representatives,

but is not entitled to specify one or more persons referred to in sub-paragraph (a) together with a body referred to in either of sub-paragraphs (b) or (c).

- (8) A nomination or notice referred to in this regulation is only valid—

- (a) if addressed to the Secretary of State;  
(b) upon receipt by the Secretary of State;  
(c) if made (or revoked) in writing;  
(d) if it nominates the whole of the lump sum to a nominee and, in the case of a nomination specifying more than one individual, if it also specifies the percentage of the lump sum to be paid to each such individual.

(9) A member who has any pensionable employment in the scheme on or after 1st April 2008 cannot give a notice referred to in paragraph (3)(a).

(10) If the lump sum on death does not exceed the specified amount, the Secretary of State may pay it to any person claiming to be the member's personal representative or to be entitled to a share of it, without requiring proof of the title of the person concerned.

(11) In paragraph (10), the specified amount means £5,000 or any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965<sup>(14)</sup> as the amount to be treated as substituted for references to £500 in section 1 of that Act.

- (12) In this regulation "surviving partner" means a—

- (a) widow; or  
(b) widower; or  
(c) civil partner; or  
(d) nominated partner,

who survives the member."

**Commencement Information**

**I17** Reg. 17 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Substitution of heading to Part G**

**18.** For the heading to Part G substitute—  
“SURVIVING PARTNER PENSIONS”.

**Commencement Information**

**I18** Reg. 18 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation G1**

**19.** After paragraph (1) of regulation G1 (widow’s pension) insert—  
“(1A) Paragraphs (2) to (7) apply if a member’s pensionable employment ceases before 1st April 2008.”.

**Commencement Information**

**I19** Reg. 19 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation G2**

- 20.—**(1) Regulation G2 (member dies in pensionable employment) is amended as follows.
- (2) After paragraph (3) insert—  
“(3A) Paragraphs (3B) to (5) apply if a member dies on or after 1st April 2008.  
(3B) The widow’s pension for the first 6 months after the member’s death will be equal to the rate of the member’s pensionable pay when the member died if that amount is greater than the amount of widow’s pension that would otherwise be payable under these Regulations.  
(3C) Except while the widow’s pension is payable at the rate mentioned in paragraph (3B), if the member dies with 2 years or more qualifying service, the widow’s pension will be equal to one-half of the pension to which the member would have been entitled if, on the date of death, the member had become entitled to a tier 2 pension under regulation E2A.”.
- (3) In paragraphs (4) and (5) after “paragraph (2)”, insert “or (3B)”.
- (4) In paragraph (6)(c) after “pay contributions”, insert “on or before 1st April 2008”.
- (5) After paragraph (7) insert—  
“(8) The widow’s pension payable on a member’s death if, on the day the member died, the member is—  
(a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;  
(b) in NHS employment;

- (c) no longer required to pay contributions on or after 2nd April 2008 pursuant to regulation D1(3) or (4) (contributions by members); and
  - (d) except where regulation R4(6) (members doing more than one job) applies, not in receipt of a pension under any of regulations E1 to E5,
- will be as described in paragraph (3B) and (3C), but with the modifications set out in paragraph (9).
- (9) The modifications referred to in paragraph (8) are—
    - (a) in paragraph (3B), for “member’s pensionable pay when he died” substitute “member’s final year’s pensionable pay”, and
    - (b) in paragraph (3C), for “on the date of death” substitute “on the member’s last day of pensionable employment”.”.

**Commencement Information**

**I20** Reg. 20 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation G3**

**21.** After paragraph (5) of regulation G3 (member dies after pension becomes payable) insert—

“(6) If a member who was in receipt of a substitute tier 1 pension under regulation E2C dies before the end of the protection period that applies to him under regulation E2C(6) (a) or E2C(6)(b), the member’s pension referred to in paragraph (2) means that member’s original tier 2 pension.

(7) For the purposes of paragraphs (2) and (4), no account will be taken of any reduction to the member’s pension under regulation E7 (general option to exchange part of pension for lump sum).”.

**Commencement Information**

**I21** Reg. 21 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation G4**

**22.** For paragraph (2) of regulation G4 (member dies with preserved pension) substitute—

“(2) If the member leaves pensionable employment before 1st April 2008 and dies within 12 months after leaving, the widow’s pension will be equal to one-half of the pension that would have been payable to the member under the scheme if the member had retired through ill health with a pension under regulation E2 on the day the member left pensionable employment.

(2A) If the member leaves pensionable employment on or after 1st April 2008 and dies within 12 months after leaving, the widow’s pension will be equal to one-half of the pension that would have been payable to the member under the scheme if the member had retired through ill health with a tier 2 pension under regulation E2A on the day the member left pensionable employment.”.

**Commencement Information**

**I22** Reg. 22 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation G7

23. For paragraph (4) of regulation G7 (widower's pension) substitute—

“(4) If regulation G2(3), G2(3C), G4(2) or G(4)(2A) applies to the calculation of the widower's pension on a member's death in pensionable employment or with a preserved pension—

- (a) the whole of the member's pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E2A(4), in the pensionable service on which the member's pension under regulation E2 or E2A (ill health retirement pensions) would have been based; and
- (b) the whole period (if any) by which the member's pension would have been increased will be treated as pensionable service after 5th April 1988.”.

#### Commencement Information

**I23** Reg. 23 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation G8

24. In paragraph (6) of regulation G8 (dependent widower's pension) after “regulation E2(10)”, insert “, regulation E2A(10)”.

#### Commencement Information

**I24** Reg. 24 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation G9

25.—(1) Regulation G9 (increased widower's pension) is amended as follows.

(2) In paragraph (3) after “regulation E2(10)”, insert “, regulation E2A(10)”.

(3) After paragraph (4) insert—

“(5) If a female member who has made an election under this regulation—

- (a) is in pensionable employment on 1st April 2008, or returns to such employment after that date; and
- (b) dies without leaving a widower but leaving a surviving civil partner or, as the case may be, a surviving nominated partner,

the widower's pension described in paragraph (1) shall be paid to that surviving partner.”.

#### Commencement Information

**I25** Reg. 25 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation G10

26. For paragraph (4) of regulation G10 (surviving civil partner's pension) substitute—



“(4) If regulation G2(3), G(2)(3C), G4(2) or G4(2A) applies to the calculation of the surviving civil partner’s pension on a member’s death in pensionable employment or with a preserved pension—

- (a) the whole of the member’s pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E2A(4), in the pensionable service on which the member’s pension under regulation E2 or E2A (ill health retirement pensions) would have been based; and
- (b) the whole period (if any) by which the member’s pension would have been increased will be treated as pensionable service after 5th April 1988.”.

**Commencement Information**

**I26** Reg. 26 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation G11**

**27.** In paragraph (6) of regulation G11 (dependent surviving civil partner’s pension) after “regulation E2(10)”, insert “, regulation E2A(10)”.

**Commencement Information**

**I27** Reg. 27 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation G13**

**28.—**(1) Regulation G13 (increased surviving civil partner’s pension) is amended as follows.

(2) In paragraph (3) after “regulation E2(10)”, insert “, regulation E2A(10)”.

(3) After paragraph (5) insert—

“(6) If a member who has made an election under this regulation—

- (a) is in pensionable employment on 1st April 2008, or returns to such employment after that date; and
- (b) dies without leaving a civil partner but leaving a surviving widower or, as the case may be, a surviving nominated partner,

the surviving civil partner’s pension described in paragraph (1) shall be paid to that surviving widower, or as the case may be, that surviving nominated partner.”.

**Commencement Information**

**I28** Reg. 28 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Insertion of new regulations G14-G17**

**29.** After regulation G13 insert—

### “Surviving nominated partner’s pension

**G14.**—(1) A member who has pensionable service on or after 1st April 2008 may, by giving notice in writing to the Secretary of State, nominate a person (“the nominated partner”) to receive a surviving nominated partner pension on the member’s death and such a nomination shall be effective from the date the Secretary of State accepts it.

- (2) The Secretary of State must accept a member’s nomination if—
- (a) the member and the nominated partner have jointly made and signed a declaration in the form required by the Secretary of State that remains effective at the member’s death; and
  - (b) the nominated partner satisfies the Secretary of State that for a continuous period of at least two years ending with the member’s death—
    - (i) the member and the nominated partner were living together as if they were husband and wife or civil partners; or
    - (ii) the member and the nominated partner were not prevented from marrying or entering into a civil partnership; or
    - (iii) the member and the nominated partner were financially interdependent or the nominated partner was financially dependent on the member; or
    - (iv) neither the member nor the nominated partner was living with a third person as if they were husband and wife or as if they were civil partners.
- (3) A declaration under paragraph (2)(a) ceases to have effect if—
- (a) it is revoked by the member or the nominated partner by a signed notice in writing given to the Secretary of State in the required form (if any); or
  - (b) the member makes a later declaration under paragraph (2)(a); or
  - (c) the member or the nominated partner marries or enters into a civil partnership.
- (4) If the Secretary of State has accepted a member’s nomination and the member subsequently dies before the member’s nominated partner in the circumstances described in any of regulations G2 to G6, the nominated partner is entitled to a pension as described in paragraphs (6) to (10) of this regulation.
- (5) Subject to paragraph (6), regulations G1 to G6 apply to the calculation and payment of pensions for nominated partners in the same manner as they apply to pensions for widows and paragraph (1) of regulation G6 shall be read as if, for the words “where the member and the member’s wife were not married to each other”, it said “where a nomination for a surviving partner pension was not effective” .
- (6) When calculating a nominated partner’s pension, any part of the member’s benefit that is based on pensionable service before 6th April 1988 will, subject to paragraphs (7) and (8), be disregarded.
- (7) If paragraphs (3) or (3C) of regulation G2 or paragraphs (2) or (2A) of regulation G4 apply to the calculation of the nominated partner’s pension on a member’s death in pensionable employment or with a preserved pension—
- (a) the whole of the member’s pensionable service will be taken into account when calculating whether and (if so) to what extent there would have been an increase, by virtue of regulation E2(3) or E2A(4) in the pensionable service on which the member’s pension under regulation E2 or E2A would have been based; and
  - (b) the whole period (if any) by which the member’s pension would have been increased will be treated as pensionable service after 5th April 1988.

(8) If regulation G3(2) applies to the calculation of the nominated partner's pension, so that the nominated partner's pension is equal to the member's pension for a limited period, the nominated partner's pension for that limited period will be equal to the whole of the member's pension (including any part of the member's pension that is based on pensionable service before 6th April 1988).

(9) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a member who has nominated a partner, those regulations as applicable to the member's nominated partner (if any).

### **Dependent surviving nominated partner's pension**

**G15.**—(1) A member may, by giving notice in writing to the Secretary of State before leaving pensionable employment, apply for the member's nominated partner to receive a dependent surviving nominated partner's pension on the member's death.

(2) The Secretary of State must accept a member's application only if the Secretary of State is satisfied that the member's nominated partner is—

- (a) permanently incapable of earning a living because of physical or mental infirmity; and
- (b) wholly or mainly dependent on the member.

(3) If the Secretary of State has accepted a member's application and the member subsequently dies before the member's nominated partner, the dependent surviving nominated partner is entitled to a dependent surviving nominated partner's pension.

(4) The dependent surviving nominated partner's pension is to be calculated in the same way as a widow's pension under regulations G1 to G6 but based only on the member's pensionable service before 6th April 1988.

(5) If the Secretary of State has accepted a member's application for a dependent surviving nominated partner's pension and the member's pensionable service started before 6th April 1988 any lump sum payable to the member will be reduced by an amount equal to 1.4 times the yearly rate of the part of the member's pension that is based on pensionable service before 6th April 1988 (except to the extent that any reduction has been off-set under regulation Q2).

(6) If regulation E2(10), regulation E2A(10) or regulation L1(8) (ill health retirement pensions and preserved pension) applies to a member who has a nominated partner, any reference in those provisions to a lump sum payable on retirement means, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum that is not reduced as described in that paragraph.

### **Purchase of surviving partner's pension in respect of service before 6th April 1988**

**G16.**—(1) Subject to this regulation, an officer in respect of whom a pension has not already become payable under regulation E2 or E2A (ill health retirement pensions) may, in respect of the whole or any part of the member's contributing service before 6th April 1988, elect to purchase an increase in the amount of any survivor's pension that becomes payable under the scheme.

(2) The purchase of an increase under paragraph (1) may be made only in respect of complete years of service, unless the officer wishes to purchase an increase in respect of all of the member's service before 6th April 1988, in which case the whole of the requisite period may be purchased whether or not it constitutes a multiple of complete years of service.

(3) An election under paragraph (1)—

- (a) must not be made later than 30th June 2009;
  - (b) must be made by notice in writing, given to the Secretary of State;
  - (c) must specify the period in respect of which the election is made;
  - (d) must be accompanied by a declaration in writing signed by the officer that he is of sound health for the member's age;
  - (e) is irrevocable.
- (4) Each figure in tables 2 and 4 of Schedule 1 is multiplied by a factor of 0.7 in respect of the cost of providing the increase provided under paragraph (1).
- (5) In this regulation "survivor's pension" means a pension that becomes payable by virtue of —
- (a) regulation G7; or
  - (b) regulation G10; or
  - (c) regulation G14.

#### **Increased surviving partner's pension**

**G17.—**(1) If a member elects on or before 30th June 2009 to buy an increased surviving partner's pension under regulation G16(1), any survivor's pension that becomes payable in respect of that member will be based on pensionable service after 5th April 1988 plus any period of pensionable service before that date that the member elected to buy for this purpose under regulation G16(1).

(2) Any survivor's pension payable in respect of the member shall be paid to (as the case may be) the member's surviving widower, civil partner or nominated partner regardless of whether that pension is payable by virtue of regulation G7, regulation G10 or regulation G14.

(3) Subject to paragraph (4), any retirement lump sum payable to a member under regulation E6, in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily proportion of that rate for each additional day (except to the extent that any lump sum reduction has been off-set under regulation Q2) (right to buy an unreduced retirement lump sum).

(4) If regulation E2(10), regulation E2A(10) or regulation L1(8) (ill health retirement pensions and preserved pension) applies to a member to whom this regulation refers, any reference in those regulations to a lump sum payable on retirement must be taken to mean a lump sum that is not reduced as described in paragraph (2) of this regulation.

(5) Subject to paragraph (6) if, by virtue of an election under regulation G16(1), the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of a member's pension plus the relevant daily proportion of that rate for each additional day, he may make an election to purchase an unreduced lump sum under regulation Q2 provided that the election is made no later than 30th June 2009.

(6) A member who has purchased additional service in accordance with regulation Q1 by way of a payment under regulation Q6 is not entitled to make an election under paragraph (4) in respect of the purchase of an unreduced lump sum."

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#### **Commencement Information**

**I29** Reg. 29 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation H1

**30.**—(1) Regulation H1 (dependent child) is amended as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (c)(**15**) for “or civil partner”, substitute “, civil partner or nominated partner”;

(b) after sub-paragraph (d) insert—

“(e) a child of a member’s nominated partner from a nominated partnership formed before the date on which the member leaves pensionable employment.”.

(3) After paragraph (2) insert—

“(2A) A child is a dependent child of a person whose pensionable employment ceases on or after 1st April 2008 for so long as that child is—

(a) under age 23; or

(b) aged 23 or over and incapable of earning a living because of permanent physical or mental infirmity from which that child was suffering at the time the member died.”.

(4) In paragraph (3)(**16**) for “A child is a dependent child”, substitute “Subject to paragraphs (6) and (7), a child is a dependent child of a person whose pensionable employment ceases on or before 31st March 2008”.

(5) In paragraph (5) omit the words from “(calculated” to “omitted”.

#### Commencement Information

**I30** Reg. 30 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation H3

**31.**—(1) Regulation H3 (member dies in pensionable employment) is amended as follows.

(2) In paragraph (2) after “paragraph (3),” insert “if the member dies before 1st April 2008”.

(3) After paragraph (2) insert—

“(2A) If the member died on or after 1st April 2008 the allowance will be calculated as described in whichever of paragraphs (4A) or (4D) apply—

(a) as a proportion of the pension that would have been payable to the member under the scheme if the member retired through ill health and had qualified for a tier 2 pension under regulation E2A on the day the member died; or

(b) if greater, the amount that the member’s pension would have been if it had been based on 10 years pensionable service.”.

(4) After paragraph (4) insert—

“(4A) Subject to paragraphs (4B) to (4E), if the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2A) if there is only one dependent child and one-half if there are two or more.

(4B) If a widow’s, widower’s, surviving civil partner’s or nominated partner’s pension is payable at the rate mentioned in regulation G2(3B), the allowance payable in respect of

(15) Sub-paragraph (c) was amended by [S.I.2005/3074](#).

(16) Paragraph (3) was amended by [S.I.2006/600](#).

any dependent child who is dependent on that widow, widower, surviving civil partner or surviving nominated partner will be payable from the day following the member's death.

(4C) If a widow's, widower's, surviving civil partner's or nominated partner's pension is payable at the rate mentioned in regulation G2(3B) but there is a dependent child who is not dependent on that widow, widower, surviving civil partner or surviving nominated partner, the allowance in respect of that child for the first three months after the member's death will be equal to the rate of member's pensionable pay when the member died.

(4D) If a member dies leaving a dependent child and there is no surviving parent (or spouse, civil partner or nominated partner of a parent), the allowance will be equal to one-third of the pension described in paragraph (2A) if there is only one dependent child and two-thirds if there are two or more, except that the allowance for the first six months after the member's death will be equal to the rate of the member's pensionable pay when the member died.

(4E) If the member dies leaving a dependent child and there is a surviving parent (or spouse, civil partner or nominated partner of a parent) but there is no entitlement to a widow's, widower's or surviving civil partner's pension calculated under regulation G2 (member dies in pensionable employment), the allowance will be paid at the rates described in paragraph (4D)."

(5) For paragraph (9) after "pay contributions", insert "on or before 1st April 2008" and for "paragraphs (2) to (8)", substitute "paragraph (2)".

(6) After paragraph (10) insert—

"(11) The child allowance payable on a member's death if, on the day the member died, the member is—

- (a) under the age of 75 if not a special class officer or under the age of 70 if a special class officer;
- (b) in NHS employment;
- (c) no longer required to pay contributions on or after 2<sup>nd</sup> April 2008 pursuant to regulation D1(3) or (4) (contributions by members); and
- (d) except where regulation R4(6) (members doing more than one job) applies, not in receipt of a pension under any of regulations E1 to E5,

will be as described in paragraph (2A) but with the modifications set out in paragraph (12).

(12) The modifications referred to in paragraph (11) are—

- (a) in paragraph (2A)(a) for "on the day he died" substitute "on the member's last day of pensionable employment"; and
- (b) in both paragraph (4C) and (4D) for "member's pensionable pay when he died" substitute "member's final year's pensionable pay".

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#### **Commencement Information**

**I31** Reg. 31 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### **Amendment of regulation H4**

**32.**—(1) Regulation H4 (member dies after pension becomes payable) is amended as follows.

(2) For paragraph (2) substitute—

"(2) Subject to paragraphs (2A) and (8), the allowance will be calculated, as described in whichever of paragraphs (3) or (4) apply, as a proportion of the amount of the member's

pension or, if greater, the amount that the member's pension would have been if it had been based on 10 years pensionable service.

(2A) If the member's pensionable employment ceased on or before 31st March 2008, the allowance will be calculated in whichever of paragraphs (3) or (4) apply, as a proportion of the amount of the member's pension or, if greater, the amount that the member's pension would have been if it had been based on the shorter of—

- (a) 10 years pensionable service; and
- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.”.

(3) In paragraph (3) after “or civil partner”, insert “or nominated partner”.

(4) After paragraph (8) insert—

“(9) If a member who was in receipt of a substitute tier 1 pension under regulation E2C (further employment after a benefit is paid under regulation E2A) dies before the end of the protection period that applies to him under regulation E2C(6)(a) or E2C(6)(b), the member's pension referred to in paragraph (2) means that member's original tier 2 pension.

(10) For the purpose of paragraphs (2) and (7), no account will be taken of any reduction to the member's pension under regulation E7 (general option to exchange part of pension for lump sum).”.

#### **Commencement Information**

**I32** Reg. 32 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### **Amendment of regulation H5**

**33.**—(1) Regulation H5 (member dies with preserved pension) is amended as follows.

(2) In paragraph (2)—

- (a) for “if the member dies” substitute “Subject to paragraph (2A), if the member dies”;
- (b) omit “and, if applicable, H3(3)”.

(3) After paragraph (2) insert—

“(2A) Subject to paragraph (2B), if the member's pensionable employment ceased on or before 31st March 2008 the allowance will be calculated, as described in whichever of paragraphs (4) or (5) apply, as a proportion of the pension that would have been payable to the member under the scheme if the member retired through ill health with a pension under regulation E2 on the day the member died.

(2B) If the member has less than 5 years' pensionable service, the allowance will be calculated as if the pension described in paragraph (2A) were based on the shorter of—

- (a) 10 years' pensionable service; and
- (b) the pensionable service the member could have completed if the member stayed in pensionable employment until age 65.”.

(4) For paragraph (3) substitute—

“(3) Subject to paragraph (3A), if the member dies 12 months or more after leaving pensionable employment, the allowance will be calculated as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member's preserved pension or, if greater, the amount that the preserved pension would have been if it had been based on 10 years' pensionable service.

(3A) If the member’s pensionable employment ceased on or before 31st March 2008, the allowance will be calculated as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member’s preserved pension or, if greater, the amount of that the preserved pension would have been if it had been based on the shorter of—

- (a) 10 years’ pensionable service; and
- (b) the pensionable service the member could have completed if the member stayed in pensionable employment until age 65.”.

(5) In paragraphs (4) and (5)(17)—

- (a) after “or civil partner”, insert “or nominated partner”;
- (b) for “paragraph (2)”, substitute “paragraphs (2) to (3A)”.

(6) In paragraph (6)(18)—

- (a) after “or civil partner”, insert “or nominated partner”;
- (b) for “or surviving civil partner’s”, substitute “, surviving civil partner’s or surviving nominated partner’s”.

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**Commencement Information**

**I33** Reg. 33 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation H7**

**34.**—(1) In the heading to regulation H7 (dependent child not being maintained by surviving parent or spouse or civil partner of a parent), after “civil partner” insert “or nominated partner”.

(2) In regulation H7(19) after “civil partner” (where three times occurring), insert “or nominated partner”.

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**Commencement Information**

**I34** Reg. 34 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation J1**

**35.** For paragraph (4)(b) of regulation J1 (allocation of pension) substitute—

- “(b) if in pensionable employment—
  - (i) in the case of a member who is not a special class officer, at any time after completing 45 years pensionable service; or
  - (ii) in the case of a member who is a special class officer, at any time after reaching age 55 and completing 40 years pensionable service, or”

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**Commencement Information**

**I35** Reg. 35 in force at 1.4.2008, see [reg. 1\(2\)](#)

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(17) Paragraphs (4) and (5) were amended by [S.I. 2005/3074](#).

(18) Paragraph (6) was amended by [S.I. 2005/3074](#).

(19) Paragraph (7) was amended by [S.I. 2005/3074](#).



## Substitution of regulation K1

36. For regulation K1 (contracting-out conditions to be overriding) substitute—

### “Contracting-out conditions to be overriding

**K1.**—(1) The scheme will be administered in conformity with the contracting-out conditions and, with the exception of the circumstances specified in paragraph (2), regulations K2 to K7 override any inconsistent provisions of these regulations.

(2) The circumstances referred to in paragraph (1) are—

- (a) if a trivial pension is commuted in accordance with regulation T7; or
- (b) if a pension is commuted in accordance with regulations E2(10), E2A(10) or L1(5) (pensions on early retirement due to ill health and preserved pensions); or
- (c) if a pension is forfeited for the reasons specified in sub-paragraphs (b) or (c) of regulation T6(1).

(3) In this Part—

- (a) “contracting-out conditions” means the conditions specified in sections 9(2A) and 9(2B) of the 1993 Act;
- (b) “guaranteed minimum” means the guaranteed minimum as defined in sections 13 to 17 of the 1993 Act;
- (c) “guaranteed minimum pension” is a pension calculated in accordance with the guaranteed minimum requirements;
- (d) “protected rights” has the same meaning as in the 1993 Act.”.

### Commencement Information

**I36** Reg. 36 in force at 1.4.2008, see [reg. 1\(2\)](#)

## Amendment of regulation K2

37.—(1) Regulation K2 (guaranteed minimum pensions) is amended as follows.

(2) In paragraph (1) for “section 14 of the Pension Schemes Act 1993 (earner’s guaranteed minimum)”, substitute “section 13 of the 1993 Act”.

(3) In paragraphs (4) and (4A) for “tax year 1988-89 and subsequent tax years”, substitute “tax years 1988-89 to 1996-97 inclusive”.

(4) In paragraph (5) for “tax year 1988-89”, substitute “tax years 1988-89 to 1996-97 inclusive”.

(5) For paragraph (6) substitute—

“(6) A member who on leaving pensionable employment—

- (a) becomes entitled to a refund of contributions under regulation L2; or
- (b) exercises a right to require a transfer or buy-out in accordance with regulation M2, but, in either case, remains (as described in regulation L2(3)) entitled to a guaranteed minimum pension or section 9(2B) rights, shall be entitled to the benefits specified in paragraph (7).

(7) The benefits are—

- (a) a pension payable from the date on which the member reaches state pension age at a weekly rate equal to the member’s guaranteed minimum (if any); and

- (b) a pension and lump sum from the date the member reaches normal benefit age in respect of the member's section 9(2B) rights.
- (8) On the death of a member to whom paragraph (6) applies, no benefit will be payable except for a widow's, widower's or surviving civil partner's pension equal to the aggregate of—
  - (a) that described in paragraph (3) or, as the case may be, paragraph (4); and
  - (b) half the member's pension in respect of section 9(2B) rights.”.

#### Commencement Information

**I37** Reg. 37 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### Amendment of regulation L1

- 38.**—(1) Regulation L1 (preserved pension) is amended as follows.
- (2) In paragraph (2)(b)(**20**) after “E1”, insert “as if it were a pension under that regulation”.
  - (3) In paragraph (3)(b)(**21**) after “regular employment”, insert “of like duration”.
  - (4) For paragraph (4) substitute—
    - “(4) Except in a case to which paragraph (4A) applies—
      - (a) if the member is in NHS employment at the relevant time (whether with the same or another employing authority), the pension and lump sum on retirement will not become payable until the member leaves NHS employment or, if sooner—
        - (i) when the member attains the age of 70, if he attains that age on or before 31st March 2008; or
        - (ii) when the member attains the age of 75, if he attains the age of 70 on or after 1st April 2008;
      - (b) the relevant time—
        - (i) in the case of a member to whom sub-paragraph (d) of paragraph (3) applies, is when he makes the application referred to in head (iii) of that sub-paragraph; or
        - (ii) in any other case, when the member attains the age of 60.”.
  - (5) After paragraph (8) insert—
    - “(9) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (3)(a), the Secretary of State shall have regard to the factors in paragraph (11) (no one of which shall be decisive) and disregard the member's personal preferences for or against engaging in that employment.
    - (10) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (3)(b), the Secretary of State shall have regard to the factors in paragraph (12) (no one of which shall be decisive) and disregard the factors in paragraph (13).
    - (11) The factors to be taken into account for paragraph (9) are—

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(20) Paragraph (2) was amended by [S.I.2000/605](#).

(21) Paragraph (3) was amended by [S.I.2000/605](#).

- (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 Secretary of State considers appropriate.
- (12) The factors to be taken into account for paragraph (10) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having 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 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 Secretary of State considers appropriate.
- (13) The factors to be disregarded for paragraph (10) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (14) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers—
- (a) that it would be reasonable for the member to refuse,
  - (b) would provide no benefit to restoring the member's capacity for—

- (i) efficiently discharging the duties of the member’s employment under paragraph (3)(a), or
- (ii) regular employment of like duration under paragraph (3)(b), before the member reaches normal benefit age; and
- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age; “permanently” means the period until normal benefit age; and “regular employment of like duration” means—
  - (a) in the case of a member who was a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member’s pensionable service as a non-GP provider immediately before that service ceased; and
  - (b) in all other cases, where prior to leaving employment that was pensionable the member was employed—
    - (i) on a whole-time basis, regular employment on a whole-time basis;
    - (ii) on a part-time basis, regular employment on a part-time basis, regard being had to the number of hours, half-days and sessions the member worked in that employment.”.

**Commencement Information**

**I38** Reg. 38 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation L2**

**39.** For paragraph (3) of regulation L2 (refund of contributions) substitute—

“(3) If the member’s employment was contracted-out by reference to the scheme, the member (and the member’s spouse or civil partner, if any) will remain entitled to a guaranteed minimum pension and section 9(2B) rights under the scheme, unless the Secretary of State discharges her liability in respect of that entitlement by paying a contributions equivalent premium under section 55(2) of the 1993 Act.”.

**Commencement Information**

**I39** Reg. 39 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation L4**

**40.** In paragraph (3)(b) of regulation L4 (early leavers returning to pensionable employment), for “(early retirement pension on grounds of ill health)” substitute “or E2A”.

**Commencement Information**

**I40** Reg. 40 in force at 1.4.2008, see [reg. 1\(2\)](#)

## Substitution of Part M

41. For Part M substitute—

### “PART M TRANSFERS AND BUY-OUTS

#### Member’s right to transfer or buy-out

**M1.**—(1) A member who leaves pensionable employment with a preserved pension has the right to require the Secretary of State to transfer or buy-out the member’s rights under the scheme as described in this regulation.

(2) Subject to the following provisions of this regulation, the member may require the Secretary of State to use the cash equivalent of the member’s rights under the scheme—

- (a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member; or
- (b) to acquire rights under—
  - (i) another occupational pension scheme; or
  - (ii) a personal pension scheme,that satisfies the requirements of Chapter IV of Part IV of the 1993 Act; or
- (c) to acquire rights under an arrangement that is a qualifying recognised overseas pension scheme for the purposes of section 169(2) of the 2004 Act; or
- (d) in any combination of the ways described in sub-paragraphs (a), (b) and (c).

(3) The member must exercise the member’s right in relation to each and every portion of the cash equivalent unless paragraph (4) applies.

(4) The benefits attributable to—

- (a) the member’s accrued rights to a guaranteed minimum pension; or
- (b) the member’s accrued rights attributable to service in contracted-out employment on or after 6th April 1997,

may be excluded from the cash equivalent transfer value payment if section 96(2) of the 1993 Act applies (trustees or managers of certain receiving schemes or arrangements able and willing to accept a transfer payment only in respect of the member’s other rights).

(5) A member who requires the cash equivalent to be used to acquire rights under another pension scheme in accordance with paragraph (2) may exercise the right—

- (a) at any time before reaching age 60; or
- (b) at a later time if the member exercises the right to require a transfer on the transfer of the member’s employment to a new employer as a result of a transfer of an undertaking to that employer.

(6) A member may require the Secretary of State to use the cash equivalent of the member’s rights under the scheme to purchase one or more buy-out policies or to acquire rights under a personal pension scheme only—

- (a) if the member leaves pensionable employment on or after 1st January 1986; and
- (b) if those rights are to be transferred to a personal pension scheme, in relation to any period of service of 2 years or more falling before 6th April 1988, only if a period

of not less than one month has elapsed between the date the member left NHS employment and the date of commencement of any further NHS employment.

- (7) If a member—
- (a) leaves pensionable employment by opting-out; and
  - (b) on so doing becomes entitled to a preserved pension under regulation L; and
  - (c) has at least 2 years' service before 6th April 1988,

the member's right to require a transfer or buy-out will be limited to the cash equivalent of the part of the member's rights that is attributable to service after 5th April 1988 and the member will acquire a right to the cash equivalent of the member's remaining rights only if the member actually leaves NHS employment before reaching age 60.

(8) A member who leaves pensionable employment before reaching age 60, without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 will be treated, for the purposes of regulations M1 to M5, as if the member left pensionable employment with a preserved pension, except that—

- (a) a member who requires the cash equivalent to be used to buy one or more buy-out policies must exercise the right to buy-out within 12 months after leaving pensionable employment; and
- (b) a member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme, a personal pension scheme or a qualifying recognised overseas pension scheme must join that other scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

### **Exercising a right to a transfer or a buy out**

**M2.**—(1) A member who wishes to exercise the member's right to a transfer or a buy out must apply in writing to the Secretary of State for a statement of the amount of the cash equivalent of the member's accrued benefits under the Scheme at the guarantee date (a "statement of entitlement").

- (2) In these Regulations, "the guarantee date" means any date that—
- (a) falls within the required period; and
  - (b) is chosen by the Secretary of State; and
  - (c) is specified in the statement of entitlement; and
  - (d) is within the period of 10 days ending with the date on which the member is provided with the statement of entitlement.
- (3) In counting the period of 10 days referred to in sub-paragraph (d), Saturdays, Sundays, Christmas Day, New Year's Day and Good Friday are excluded.
- (4) In paragraph (2) "the required period" means—
- (a) the period of 3 months beginning with the date of the member's application for a statement of entitlement; or
  - (b) such longer period beginning with that date (but not exceeding six months) as may reasonably be required if, for reasons beyond the control of the Secretary of State, the requisite information cannot be obtained to calculate the amount of the cash equivalent.

(5) The member may withdraw the application for a statement of entitlement by notice in writing at any time before the statement is provided.

### **Amount of member's cash equivalent**

**M3.**—(1) Subject to the following provisions of this regulation, the member's guaranteed cash equivalent will be equal to the capitalised value of all the member's accrued rights to benefits under the scheme and any associated rights under Part I of the Pensions (Increase) Act 1971, calculated and verified as required by Chapter IV of Part IV of the 1993 Act.

(2) Except in the case of a transfer payment accepted under regulation N3A (transfers in respect of members to whom regulation B5 applies who elect to join or rejoin the scheme), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4) (member's right to transfer accrued benefits to the scheme), plus the amount of the member's contributions to the scheme.

(3) If a member's cash equivalent is used to acquire rights under another occupational pension scheme, any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the previous Regulations as applicable immediately before that date, if this would be more favourable to the member.

(4) If the transfer value payment is made under the public sector transfer arrangements, the amount of the transfer value payment is calculated—

- (a) in accordance with those arrangements rather than paragraphs (2) 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.

(5) In any case where the Secretary of State has directed, under regulation T6, that part of a member's benefits under these Regulations shall be forfeited, the cash equivalent payable in respect of that member shall be reduced by the capitalised value of the forfeited part of those benefits.

### **Applications for transfer value payments: General**

**M4.**—(1) A member who has applied for and received a statement of entitlement under regulation M2 may apply in writing to the Secretary of State 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 M5(2)).

(3) In these Regulations 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 Secretary of State may require.

(6) An application under this regulation may be withdrawn by notice in writing to the Secretary of State, 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**

**M5.**—(1) Subject to paragraph (5), an application under regulation M4 must be made before the end of the period of 3 months beginning with the guarantee date, and the payment must be made no later than—

- (a) 6 months after that date; or
- (b) if it is earlier, the date on which the member reaches 60.

(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 per cent above the Bank of England base rate.

(3) In this regulation “Bank of England base rate” means—

- (a) except where sub-paragraph (b) applies, the rate announced from time to time by the Monetary Policy Committee of the Bank of England as the official dealing rate, being the rate at which the Bank is willing to enter into transactions for providing short term liquidity in the money markets, and
- (b) if an order under section 19 of the Bank of England Act 1998 is in force, any equivalent rate determined by the Treasury under that section.

(4) Paragraph (5) applies if—

- (a) disciplinary or court proceedings against the member are begun within 12 months after the member leaves the employment which qualified the member to belong to the Scheme; and
- (b) it appears to the Secretary of State that the proceedings may lead to all or part of the member’s benefits being forfeited under regulation T6.

(5) The Secretary of State may defer doing what is needed to carry out what the member requires until the end of the period of 3 months beginning with the date on which those proceedings (including any proceedings on appeal) are concluded.

(6) In any case where a direction is given under regulation T6 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.

(7) Subject to paragraph (8), if a transfer value payment is made in respect of a member’s rights under the Scheme, those rights are extinguished.

(8) If the member’s rights described in regulation M1(4) have been excluded from the transfer payment, the Secretary of State will continue to be liable to provide the benefits described in regulation K2(7) (guaranteed minimum pension).

### **Special terms for transfer out (bulk transfers etc)**

**M6.**—(1) If one or more members (the transferring members)—

- (a) leave pensionable employment,
- (b) join another occupational pension scheme, and



(c) exercise a right to transfer to that scheme under regulation M2, the Secretary of State may, after taking advice from the Scheme Actuary, make a single transfer payment to that scheme in respect of the transferring members.

(2) The Secretary of State must calculate the amount of any transfer payment paid under this regulation after taking advice from the Scheme Actuary.”.

**Commencement Information**

**I41** Reg. 41 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation N1**

**42.** In paragraph (2)(b) of regulation N1 (member’s right to transfer accrued rights to benefits to the scheme) after “amount of the transfer payment”, insert “that relates to rights accrued in the transferring scheme before 6th April 1997”.

**Commencement Information**

**I42** Reg. 42 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Omission of regulation N5**

**43.** Regulation N5 (waiver of transfer payment) shall be omitted.

**Commencement Information**

**I43** Reg. 43 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation P2**

**44.** In regulation P2 (other leave of absence) for paragraphs (1) and (2), substitute—

“(1) This regulation applies to a member who starts a leave of absence from work on, or after, 1st April 2008 for reasons other than those referred to in regulation P1.

(2) A period of absence to which this regulation applies will count as pensionable service if for a continuous period not exceeding 6 months commencing with the member’s first day of leave of absence, the member contributes to the scheme.”.

**Commencement Information**

**I44** Reg. 44 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation Q1**

**45.—**(1) Regulation Q1 (right to buy additional service) shall be amended as follows.

(2) After paragraph (1) insert—

“(1A) A member may only increase the member’s rights to benefit by buying additional service, other than that to which paragraph (9) of this regulation refers, if—

- (a) the member has given notice of the member's intention to exercise that right in writing or in such other form as the Secretary of State agrees to accept; and
  - (b) that notice is received by the member's employing authority or the scheme administrator on or before 31st March 2008; and
  - (c) the Secretary of State accepts an election to pay for additional service under regulation Q3 and the member makes regular additional contributions in respect of that election from a birthday that falls between 1st April 2008 and 31st March 2009.”.
- (3) For paragraph (2) substitute—
- “(2) A member buying additional service to which paragraph (9) of this regulation refers, may choose to pay for that additional service by—
- (a) making a single payment in accordance with regulation Q4; or
  - (b) making regular additional contributions in accordance with regulation Q6; or
  - (c) a combination of (a) and (b).
- (2A) A member buying additional service other than that to which paragraph (9) of this regulation refers, must pay for that additional service by making regular additional contributions in accordance with regulation Q6.”.
- (4) In paragraph 4(a) for “(early retirement pension on grounds of ill health)”, substitute “or E2A”.
- (5) After paragraph (5A) insert—
- “(5B) For the purpose of regulation G14 (surviving nominated partner's pension), if a member who has a nominated partner exercised the member's right to buy additional service before 6 April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.”.
- (6) In paragraph (11) omit the definition of “tax year”.

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**Commencement Information**

**I45** Reg. 45 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation Q2**

**46.** In paragraph (1)(22) of regulation Q2 (right to buy an unreduced retirement lump sum) omit “or in a civil partnership”.

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**Commencement Information**

**I46** Reg. 46 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation Q4**

**47.—**(1) Regulation Q4 (paying for additional service by single payment) is amended as follows.

(2) For paragraph (1) substitute—

“(1) A member who wishes to buy additional service for all or part of the member's previous pensionable service in accordance with regulation Q1(9) by a single payment must

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(22) Paragraph (1) was amended by [S.I.2005/3074](#).

elect to do so within 12 months of re-joining the scheme following the break in pensionable employment described in that regulation.”.

(3) Omit paragraph (2).

(4) For paragraph (3) substitute—

“(3) The amount of a single payment for additional service will be one-half of the cost calculated in accordance with Table 1 of Schedule 1.”.

(5) Omit paragraph (7).

**Commencement Information**

**I47** Reg. 47 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation Q5**

**48.** After paragraph (2A) of regulation Q5 (paying for unreduced lump sum by single payment) insert—

“(2B) A member who has a nominated partner who wishes to pay for an unreduced lump sum by a single payment must elect to do so within 12 months after applying for the member’s nominated partner to receive a dependent surviving nominated partner’s pension under regulation G15.”.

**Commencement Information**

**I48** Reg. 48 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation Q6**

**49.—**(1) Regulation Q6 (paying for additional service or unreduced retirement lump sum by regular additional contributions) is amended as follows.

(2) In paragraph (6) after “scheme” insert “before 1st April 2008” and for “the Inland Revenue” substitute “HM Revenue and Customs”.

(3) After paragraph (6) insert—

“(6A) The member’s total regular additional contributions made on or after 1st April under this regulation may not exceed—

- (a) in the case of a member paying contributions of 5 per cent of the member’s pensionable pay under regulation D1 on the member’s birthday immediately following the date of the election referred to in paragraph (3), 10 per cent of pensionable pay;
- (b) in the case of a member paying contributions of more than 5 per cent of the member’s pensionable pay under regulation D1 on the birthday referred to in (a), 9 per cent of pensionable pay, or
- (c) in any case referred to in (a) or (b) above, any other limit specified for the time being by HM Revenue and Customs.”.

**Commencement Information**

**I49** Reg. 49 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation Q7

**50.**—(1) Regulation Q7 (part payment for additional service or unreduced retirement sum) is amended as follows.

- (2) In paragraph (2) for “(early retirement pension on grounds of ill health)”, substitute “or E2A”.
- (3) In paragraph (3) after “E2”, insert “or E2A”.

#### Commencement Information

**I50** Reg. 50 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Insertion of new regulations Q8 to Q17

**51.** After regulation Q7 (part payment for additional service or unreduced retirement sum) insert—

#### “Option to pay additional periodical contributions to purchase additional pension

**Q8.**—(1) A member who is in pensionable employment may opt to make additional periodical contributions during the contribution option period to increase by a specified amount—

- (a) the benefits payable to the member under Parts E, L and S (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 to six months under Part S, G and H); or
  - (b) those benefits and the benefits otherwise payable in respect of surviving partners and dependent children under Parts S, G and H.
- (2) A member may exercise the option under paragraph (1) more than once.
- (3) If a member exercises an option under paragraph (1), the member’s employing authority must—
- (a) deduct the member’s contributions from the member’s earnings; and
  - (b) pay them to the Secretary of State not later than the 19th day of the month following the month in which the earnings were paid.
- (4) The annual amount of the periodical contributions payable at the beginning of the contribution option period must not be—
- (a) an amount less than the minimum amount; or
  - (b) an amount other than a multiple of the minimum amount.
- (5) In paragraph (4) “the minimum amount” means the amount that would, in accordance with tables prepared for the Secretary of State 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 Secretary of State 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 under any option during that year, 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 Q10; or
- (b) contributions made under regulation Q11,

may not exceed £5000 or such other amount as the Secretary of State may for the time being determine.

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

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

(9) For the purposes of this part, a member's “chosen birthday” must be either the member's 60th or 65th birthday.

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

**Q9.**—(1) This paragraph applies if during the contribution option period a member who has exercised the option under regulation Q8—

- (a) is absent from work for any of the reasons described in regulation P1(2); or
- (b) is on a leave of absence in accordance with regulation P2.

(2) If paragraph (1) applies—

- (a) the contributions under the option continue to be payable unless the member ceases paying contributions under regulation D1; and
- (b) where the member does so cease, the member may continue to make contributions in accordance with the option if the member resumes making contributions under regulation D1 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 member—

- (a) exercises the option under regulation Q8;
- (b) leaves pensionable employment during the contribution option period; and
- (c) returns to pensionable employment within 12 months of leaving.

(4) If paragraph (3) applies, the member may continue to make contributions in accordance with the option after returning to pensionable employment unless a refund of contributions has been made to the member under regulation L2.

(5) For the purposes of paragraph (4) it does not matter whether the member has paid any of the repaid contributions to the Secretary of State in accordance with regulation L4(5) (early leavers returning to pensionable employment).

### **Members option to pay lump sum contributions to purchase additional pension**

**Q10.**—(1) A member who is in pensionable employment may opt to make a single lump sum contribution to increase by a specified amount—

- (a) the benefits payable to the member under parts E, L and S (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 to six months under Part S, G and H); or
- (b) those benefits and the benefits otherwise payable in respect of surviving partners and dependent children under Parts S, G and H.

(2) A member may only make a contribution under this regulation of an amount—

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

(3) In paragraph (2) “the minimum amount” means the amount that is, in accordance with tables prepared for the Secretary of State 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 Secretary of State 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) the additional contribution is payable by the member to the employing authority—

- (a) by deduction from the member’s earnings or otherwise; and
- (b) before the end of the period of 1 month beginning with the day on which the member is notified by the Secretary of State that the option is accepted; and
- (c) the employing authority must pay the additional contribution to the Secretary of State 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 Q8; or
- (b) contributions made under regulation Q11,

may not exceed £5000 or such other amount as the Secretary of State may for the time being determine.

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

**Q11.**—(1) The employing authority of a member who is in pensionable employment may opt to make a single lump sum contribution to increase by a specified amount—

- (a) the benefits payable to the member under parts E, L and S (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 to six months under Part S, G and H); or
- (b) those benefits and the benefits otherwise payable in respect of surviving partners and dependent children under Parts S, G and H.

(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 Q10(3)); or
- (b) a multiple of that amount.

(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 Q8; or
- (b) contributions made under regulation Q10,

may not exceed £5000 or such other amount as the Secretary of State may for the time being determine.

(5) A contribution under this regulation must be paid by the employing authority to the Secretary of State within one month of the date on which the authority gave the Secretary of State notice under regulation Q12(2).

#### **Exercise of options under regulations Q8, Q10 and Q11**

**Q12.**—(1) A member exercising an option under regulation Q8 or Q10 must do so by giving notice in writing to the employing authority, giving such information as may be required.

(2) An employing authority exercising an option under regulation Q11 must do so by giving notice in writing to the Secretary of State, giving such information as may be required.

(3) An option under regulation Q8, Q10 or Q11 may not be exercised during a period whilst the member is absent from work for any reason.

(4) For the purposes of these Regulations—

- (a) a member is treated as exercising an option under regulation Q8 or Q10 on the date on which the employing authority receives the member's notice under paragraph (1); and
- (b) an employing authority is treated as exercising an option under regulation Q11 on the date on which the Secretary of State receives the authority's notice under paragraph (2).

(5) The Secretary of State—

- (a) must refuse to accept an option exercised under—
  - (i) regulation Q8 if not satisfied that that the member is in good health and there is no reason why the member's health should prevent the member from paying the contributions for the whole contribution period;
  - (ii) regulation Q10 or Q11 if not satisfied that the member is in good health,
- (b) may refuse to accept an option under regulation Q8, Q10 or Q11 in any other circumstances.

(6) If the Secretary of State refuses to accept such an option, the Secretary of State must give notice in writing of that fact—

- (a) in the case of an option exercised under regulation Q8 or Q10, to the member; and
- (b) in the case of an option exercised under regulation Q11, to the employing authority and the member.

- (7) These Regulations apply as if an option—
- (a) under regulation Q8, Q10 or Q11 had not been exercised if the Secretary of State refuses to accept the option;
  - (b) under regulation Q10 had not been exercised if the payment is not received by the employing authority—
    - (i) before the end of the period of 1 month beginning with the day on which the Secretary of State notifies the member of the acceptance of the option; or
    - (ii) if it is earlier, on or before the member’s chosen birthday, and
  - (c) under regulation Q11 had not been exercised if the payment is not received by the Secretary of State on or before the member’s chosen birthday.

### **Cancellation and cessation of options under regulation Q8**

**Q13.**—(1) A member may cancel an option under regulation Q8(1) by giving the employing authority notice in writing.

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

(3) If it appears to the Secretary of State that the requirement in regulation Q8(7) will not be met if the member continues to make periodical contributions under an option exercised under regulation Q8, the Secretary of State may cancel the option by giving the member notice in writing.

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

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

**Q14.**—(1) This regulation applies if—

- (a) an option is exercised by a member under regulation Q8 and all the contributions to be made under the option are made;
- (b) an option is exercised by a member under regulation Q10 or by a member’s employing authority under regulation Q11 and the lump sum payment is made.

(2) Subject to paragraph (7), the member’s pension is increased by the full amount of the increase to be made in accordance with the terms of the option after the final adjustment in that amount in accordance with regulation Q17.

(3) Paragraph (2) is without prejudice to any reduction falling to be made in accordance with regulation Q15(5) as a result of the member becoming entitled to payment of a pension before the member’s chosen birthday.

(4) In the case of an option under regulation Q8(1)(b), Q10(1)(b) or Q11(1)(b), any benefit payable to a surviving partner or a dependent child in respect of the member under these regulations is increased by the appropriate amount.

(5) In paragraph (4) subject to regulations Q15 and Q16(3) “the appropriate amount” means—

- (a) in the case of a surviving partner pension payable under regulation G2, G4 or S4A(10), 37.5 per cent 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 surviving partner pension payable under regulation G3, 37.5 per cent of the amount of the increase in the member's pension as a result of the option;
- (c) in the case of a child allowance payable under regulation H3, H5 or S4A(17)(b), the appropriate fraction of 75 per cent 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));
- (d) in the case of a child allowance payable under regulation H4, the appropriate fraction of 75 per cent of the amount of the increase in the member's pension as a result of the option.

(6) For the purposes of paragraph (5) the "appropriate fraction" means the same fraction as that applied to the member's pension in order to calculate the amount of child allowance payable in respect of that member.

(7) Paragraph (8) applies only to an option under Q8(1)(a), Q10(1)(a) or Q11(1)(a) where a pension is to be paid for either three or six months at the same rate as the member's pension was being paid at the date of that member's death.

(8) Any increase in a member's pension shall be included only in a benefit payable to a surviving partner or a dependent child in respect of the member under these regulations whilst it is being paid at the rate and for the duration of one of the periods referred to in paragraph (7).

#### **Effect of death or early payment of pension after option exercised under regulation Q8, Q10 or Q11**

**Q15.**—(1) If a member in respect of whom an option under regulation Q8, Q10 and Q11 has been exercised dies before the end of the period of 12 months beginning with the date on which the option was exercised—

- (a) regulation Q14(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 Q8 or Q10, to the member's personal representatives; and
  - (ii) in the case of an option under regulation Q11, to the employing authority which made the contribution.

(2) If a member in respect of whom an option under regulation Q8 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 Q14(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 Q8, Q10 or Q11 has been exercised becomes entitled to a pension under regulation E2A 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 Q14(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 Q8 or Q10, to the member, and
  - (ii) in the case of an option under regulation Q11, to the employing authority which made the contribution.

(4) If a member in respect of whom an option under regulation Q8 has been exercised becomes entitled to a pension under regulation E2A 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 Q14(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 Q8, Q10 or Q11 has been exercised—

- (a) becomes entitled to a pension under regulation E3, E3A, or E5; or
- (b) becomes entitled to a pension under regulation E1 or L1 before reaching the age of 60; or
- (c) becomes entitled to a pension under regulation E1 after age 60 but before the member's chosen birthday

the increase in the member's pension which would otherwise be due under regulation Q14(2) or regulation Q16 is reduced.

(6) The amount of the reduction is such amount as the Secretary of State determines, after consulting the Scheme Actuary, to be appropriate by reason of the payment of the increase before the member reaches the member's chosen birthday.

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

**Q16.**—(1) This regulation applies if—

- (a) the full number and amount of contributions due under an option under regulation Q8 for the whole contribution option period are not made; and
- (b) paragraphs (1) to (4) of regulation Q15 do not apply.

(2) The increase in the member's pension is—

- (a) the appropriate proportion of the increase that would have been made under regulation Q14(2) if the full number and amount of contributions had been made; or
- (b) the appropriate proportion of the increase calculated in accordance with subparagraph (a) reduced in accordance with regulation Q15(6) if regulation 15(5) applies to the member.

(3) In the case of an option under regulation Q8(1)(b), Q10(1)(b) or Q11(1)(b), the increase in any surviving partner or child allowance payable under parts G and H and S in respect of the member is—

- (a) the appropriate proportion of the increase that would have been made under regulation Q14(4) if the full number and amount of contributions had been made; or
- (b) the appropriate proportion of the increase calculated in accordance with subparagraph (a) reduced in accordance with regulation Q15(5) if that regulation applies to the member.

(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 Secretary of State.

(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 Q8 for the whole contribution option period; and
- (b) the preservation requirement

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

**Q17.**—(1) This regulation applies for the purposes of determining the final amount of the increase in a member's pension as a result of the exercise of an option under regulation Q8, Q10 or Q11.

(2) The amount of that increase immediately before the beginning date for that pension is found as set out in paragraph (3).

(3) Step 1

Calculate the amount of the increase in accordance with regulations Q14 to Q16 immediately before that date ("the basic amount").

Step 2

Multiply the basic amount by the retail prices index for the second month before that in which the person becomes entitled to it 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

Add to the Step 3 amount any amount by which the Step 3 amount would be increased under the Pensions (Increase) Act 1971 if it were the amount of the member's pension to find the Step 4 amount.

Step 5

Divide the Step 4 amount by the Step 3 amount to find the Step 5 factor.

Step 6

Divide the Step 3 amount by the Step 5 factor to find the adjusted basic amount.

(5) The amount of the increase in a member's pension as a result of the exercise of an option under regulation Q8, Q10 or Q11 as at the beginning date for that pension is—

- (a) if the adjusted basic amount is greater than the basic amount, the adjusted basic amount; and
- (b) otherwise the basic amount.

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

#### **Commencement Information**

**I51** Reg. 51 in force at 1.4.2008, see [reg. 1\(2\)](#)

### **Amendment of regulation R3**

**52.** In paragraph (7) of regulation R3 (mental health officers)—

- "(a) in sub-paragraph (a) for "(early retirement pension on grounds of ill health)", substitute "or E2A",
- (b) in sub-paragraph (b) for "or surviving civil partner's", substitute " , surviving civil partner's or surviving nominated partner's"."

**Commencement Information**

**I52** Reg. 52 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation R4**

**53.** In paragraph (5) of regulation R4 (members doing more than one job), for “70” substitute “75”.

**Commencement Information**

**I53** Reg. 53 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation R5**

**54.** For paragraph (6) of regulation R5 (part-time employment) substitute—

“(6) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2, E2A, E3 or E3A (ill health pensions, pensions on redundancy and early retirement pensions)—

- (a) the member’s pensionable service in part-time employment will count at its full length for the purpose of calculating—
  - (i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 or E2A is based should be increased under that regulation; or
  - (ii) the qualifying service for the purposes of regulation E3(2)(a) or regulation E3A(2)(a),
- (b) the pension will be based on the whole-time equivalent of the period of part-time employment and, in the case of a pension under regulation E2 or E2A, the increase under that regulation will be limited to such amount as bears the same proportion to the amount that would have been paid had the pensionable service not been part-time as the whole-time equivalent bears to comparable whole-time employment.”

**Commencement Information**

**I54** Reg. 54 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation R9**

**55.—**(1) Regulation R9 (members whose earnings are reduced) is amended as follows.

(2) For paragraphs (1) and (2) substitute—

“(1) The Secretary of State may agree to pay a preserved pension under regulation L1 in respect of a member’s pensionable service before the member’s earnings were reduced if—

- (a) the member has at least two years qualifying service; and
- (b) within the three month period after the member’s earnings are reduced that member’s employer certifies that the reduction is due to the circumstances described in paragraph (2); or

- (c) the member satisfies all of the conditions specified in paragraph (2A).
- (2) The circumstances referred in paragraph (1)(b) are that the reduction is due to—
  - (a) the member being transferred to other employment with an employing authority; or
  - (b) the member taking up other employment with an employing authority, in circumstances approved by the Secretary of State; or
  - (c) a change in the member’s duties, while continuing in the same employment, otherwise than at the member’s request or as a result of something done by the member.
- (2A) The conditions referred to in paragraph (1)(c) are that—
  - (a) the member has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) the member makes an election and the Secretary of State has not previously accepted an election made by that member, and
  - (c) the member’s employer has certified that—
    - (i) the member’s pensionable pay is reduced by at least 10 per cent for a period of at least one year beginning with the first pay day on which the reduced pensionable pay was paid;
    - (ii) for a period of at least 12 months ending immediately before the reduction referred to in (i), the member’s pensionable pay had not been subject to any other reduction;
    - (iii) the reduction to the member’s pensionable pay is the result of a change to that member’s duties so that the member’s new, or remaining, duties are less demanding and carry less responsibility than the member’s previous duties.”.
- (3) For paragraph (4), substitute—
  - “(4) An election referred to in paragraph (2A) of this regulation must be made—
    - (a) in writing and addressed to the Secretary of State, and
    - (b) within 15 months of the member’s pensionable pay being reduced.”.
- (4) In paragraph (5) for “exercising the option described in this regulation”, substitute “the Secretary of State agrees to pay a preserved pension under regulation L1 in accordance with paragraph (1)”.
- (5) In paragraph (6)(b) after “(early retirement pension on grounds of ill health)”, insert “or E2A”.
- (6) For paragraph (7), substitute—
  - “(7) If the member leaves pensionable employment with a pension under regulation E2 or E2A and the member’s pensionable service falls to be increased as described in—
    - (a) paragraphs (4) to (6) of regulation E2; or
    - (b) paragraphs (4) to (6) of regulation E2Athen, if the member’s pensionable service before and after the break is treated separately under paragraph (5), the increase will apply only in respect of benefits attributable to the period after the member’s earnings were reduced.
- (8) For the purposes of this regulation, “pensionable pay” in respect of part-time employment means the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment.”.

**Commencement Information**

**I55** Reg. 55 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation S1**

**56.** For paragraph (4) of regulation S1 (suspension of pension on return to NHS employment) substitute—

“(4) The pension referred to in paragraph (1) shall again become payable if the member either ceases to be in any NHS employment (or reduces the number of hours worked to 16 or less) for a period of one month or, if sooner—

- (a) from the date of the member’s 70th birthday if the pension referred to in paragraph (1) becomes payable on or before 31st March 2008; or
- (b) from the date of the member’s 75th birthday if the pension referred to in paragraph (1) becomes payable on or after 1st April 2008.”.

**Commencement Information**

**I56** Reg. 56 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of regulation S2**

**57.—**(1) Regulation S2 (reduction of pension on return to NHS employment) is amended as follows.

(2) For paragraphs (1) and (1A), substitute—

“(1) Subject to paragraph (15), this regulation applies to a member—

- (a) until the member attains the age of 60; and
- (b) who is in receipt of a relevant pension; and
- (c) who continues in, or subsequently returns to, NHS employment.

(1A) A relevant pension for the purpose of this regulation is a pension payable,—

- (a) in respect of pensionable employment that ceased before 1st April 2008,—
  - (i) under any or regulations E2 to E3C (pensions on ill health retirement and redundancy), or
  - (ii) in accordance with L1(2)(b)(preserved pension), or
- (b) in respect of pensionable employment that ceased on or after 1st April 2008,—
  - (i) any of regulations E2 to E3, or
  - (ii) in accordance with E3A(2)(d)(ii)(early retirement pension (termination of employment by employing authority)) or
  - (iii) except where paragraph (c) applies, in accordance with L1(2)(b), or
- (c) where the member is a special class officer —
  - (i) regulation E1(normal retirement pension), or
  - (ii) if regulation R2(3)(b)(nurses, physiotherapists, midwives and health visitors) applies to the member, in accordance with L1(2)(b).”.

(3) For paragraph (3) substitute—

- “(3) If the relevant pension is one referred to in paragraph (1A)(a) or (c)—
- (a) the member’s pension will be reduced by the appropriate amount;
  - (b) the appropriate amount is the difference between the member’s previous pay and the aggregate of—
    - (i) the amount of the member’s pension (including in that amount any amount by which that pension has been reduced pursuant to an election under regulation E7); and
    - (ii) the amount of the member’s pay from NHS employment for any financial year after the pension becomes payable.

(3A) If the relevant pension is one referred to in paragraph (1A)(b), the member’s pension will be reduced in accordance with paragraphs (3B) to (3D) if Amount A exceeds the member’s previous pay.

(3B) The reduction in that member’s pension shall be equal to the difference between amount A and the member’s previous pay, but shall not exceed Amount B.

(3C) For the purposes of paragraphs (3A) and (3B), amount A is the aggregate of—

- (a) the amount of the member’s pay from NHS employment for any financial year after the pension becomes payable; and
- (b) Amount B.

(3D) For the purposes of paragraphs (3B) and (3C), amount B is the difference between—

- (a) the amount of the member’s pension (including in that amount any amount by which that pension has been reduced pursuant to an election under regulation E7); and
- (b) the amount of an actuarially reduced pension.”.

(4) In paragraph (14), in the appropriate place in alphabetical order insert—

““actuarially reduced pension” means such annual amount as the Secretary of State determines, after consulting the Scheme Actuary, to be the amount that would have been payable to the member (regardless of whether the member has reached normal minimum pension age or protected minimum pension age) if the member become entitled to a pension—

- (a) calculated in accordance with regulation E5 (early retirement pension with actuarial reduction) at the time he became entitled to a pension mentioned in paragraph (1A)(b), plus
- (b) any increases to that amount payable under Part I of the Pensions (Increase) Act 1971 for that period;”.

(5) For paragraph (15), substitute—

“(15) This regulation does not apply to—

- (a) practice staff in respect of whom a pension is payable under any of regulations E1 to E5 (retirement pensions) and L1 (preserved pension) who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who—
  - (i) were ineligible to rejoin the scheme with effect from 1st September 1997; or
  - (ii) made an election not to rejoin the scheme with effect from that date and who have not cancelled that election; and
- (b) members who are transferred into NHS employment as a result of a transfer of an undertaking to the employer.”.

.....

**Commencement Information**

**I57** Reg. 57 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Insertion of new regulation S3A**

**58.** After regulation S3 (benefits in respect of pensionable employment after pension becomes payable) insert—

**“Benefits in respect of pensionable employment after pension becomes payable under regulation E2A**

**S3A.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2A (ill health pension on early retirement) and who subsequently returns to pensionable employment.

(2) For the purposes of this regulation—

- (a) the member’s “previous service” means the pensionable service in respect of which the member became entitled to receive a pension under regulation E2A; and
- (b) the member’s “later service” means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (4), the member’s benefits in respect of later service shall be calculated without regard to the member’s previous service.

(4) For the purposes of regulation C2 (meaning of pensionable service) and regulation D1(3) and (4) (contributions by members), the member’s previous service and later service shall be aggregated.

(5) Subject to the following provisions of this regulation, a member who—

- (a) is entitled to a tier 1 pension in respect of the member’s previous service; and
- (b) satisfies the tier 1 condition or, as the case may be, the tier 2 condition in respect of the member’s later service,

shall be entitled to the following benefits.

(6) Those benefits are—

- (a) the member’s original tier 1 pension in respect of the member’s previous service; and
- (b) a tier 1 pension or, as the case may be, a tier 2 pension in respect of the member’s later service.”.

.....

**Commencement Information**

**I58** Reg. 58 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Amendment of heading to regulation S4**

**59.** In the heading to regulation S4 (benefits on death in pensionable employment after pension becomes payable) after “pension”, insert “under regulation E2”.



### Commencement Information

**I59** Reg. 59 in force at 1.4.2008, see [reg. 1\(2\)](#)

### Amendment of regulation S4

**60.** In regulation S4 for paragraphs (4) to (9) substitute—

“(4) If a member to whom this regulation applies leaves a surviving—

- (a) spouse or civil partner; or
- (b) nominated partner (if the member became entitled to the pension referred to in paragraph (1) on or after 1st April 2008),

the amount of pension payable to the surviving spouse, civil partner or nominated partner shall be the aggregate of the amounts referred to in paragraphs (5) and (7).

(5) Subject to paragraph (9), the amount payable in respect of the member’s previous service shall be equal to the amount of the member’s pension (if any) that was payable when he died.

(6) The amount referred to in paragraph (5) shall be paid for—

- (a) the 3 months immediately following the member’s death; or
- (b) the 6 months immediately following the member’s death if he leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.

(7) The amount payable in respect of the member’s later service shall be equal to the rate of the member’s pensionable pay when he died.

(8) The amount referred to in paragraph (7) shall be paid for the 6 months immediately following the member’s death.

(9) Paragraph (5) shall not apply if the aggregate of the spouse’s or civil partner’s pension and any child allowance which would otherwise be payable under these Regulations in respect of the member’s previous service is greater.

(10) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (6), the amount of the surviving spouse’s, civil partner’s or nominated partner’s pension in respect of the member’s previous service shall be the amount determined in accordance with regulation G3.

(11) Upon expiry of the 6 month period referred to in paragraph (8), the amount of the surviving spouse’s, civil partner’s or nominated partner’s pension in respect of the member’s later service shall be equal to one-half of the rate of pension mentioned in paragraph (3A) that would have been payable to the member.

(12) If a member to whom this regulation applies leaves a dependent child but—

- (a) does not leave a surviving spouse or civil partner; and
- (b) a nominated partner pension is not payable in respect of the member’s later service,

the child allowance, for the 6 months immediately following the member’s death, shall be equal to the aggregate of the member’s rate of pensionable pay when he died and the amount of the member’s pension (if any) that he was receiving at that time.

(13) Subject to paragraph (14), except where a child allowance is payable at the rate mentioned in paragraph (12), the child allowance in respect of the member’s later service shall—

- (a) be paid as a proportion of the rate of pension mentioned in paragraph (3A) that would have been payable to the member; and
- (b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (member dies in pensionable employment).

(14) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated the member's previous service and when he died, any child allowance payable under these Regulations shall be calculated according to—

- (a) regulation H4 (member dies after pension becomes payable) in respect of the pension already in payment; and
- (b) regulation H3 in respect of later pensionable employment.

(15) If the aggregate of the pensionable service used in the calculation referred to in paragraph (14)(a) and that used in the calculation referred to in paragraph (14)(b) ("the member's aggregated service") is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(16) The amount of additional service referred to in paragraph (15) is the difference between 10 years pensionable service and the member's aggregated service."

#### **Commencement Information**

**I60** Reg. 60 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### **Insertion of new regulation S4A**

**61.** After regulation S4 insert—

##### **"Benefits on death in pensionable employment after pension under regulation E2A becomes payable**

**S4A.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2A who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) dies in pensionable employment.

(2) For the purposes of this regulation, the member's "previous service" means the pensionable service in respect of which the member became entitled to receive a tier pension under regulation E2A (ill health pension on early retirement) and the member's "later service" means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (4), the member's benefits in respect of later service shall be calculated without regard to the member's previous service.

(4) For the purposes of regulation C2 (meaning of pensionable service) and regulation D1(3) and (4) (contributions by members), the member's previous service and later service shall be aggregated.

(5) If this regulation applies, a lump sum payable on the member's death shall be payable in addition to any lump sum payable under regulation F2 (member dies after pension becomes payable).

(6) The additional lump sum referred to in paragraph (5) shall be equal to 5 times the amount of the pension that would have been payable to the member had he left NHS

employment and been entitled to a tier 2 pension based on the member's later service under regulation E2A on the date of the member's death.

(7) If a member to whom this regulation applies leaves a surviving spouse, civil partner or nominated partner, the amount of pension payable to the surviving spouse, civil partner or nominated partner shall be the aggregate of the amounts referred to in paragraphs (8) and (10).

(8) Subject to paragraph (12), the amount payable in respect of the member's previous service shall be equal to the amount of the member's pension (if any) that was payable when he died.

(9) The amount referred to in paragraph (8) shall be paid for—

- (a) the 3 months immediately following the member's death; or
- (b) the 6 months immediately following the member's death if the member leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.

(10) The amount payable in respect of the member's later service shall be equal to the member's rate of pensionable pay when the member died.

(11) The amount referred to in paragraph (10) shall be paid for the 6 months immediately following the member's death.

(12) Paragraph (8) shall not apply if the aggregate of the spouse's, civil partner's or nominated partner's pension and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.

(13) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (9), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's previous service shall be the amount determined in accordance with regulation G3 (member dies after pension becomes payable).

(14) Upon expiry of the 6 month period referred to in paragraph (11), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's later service shall be equal to one-half of the rate of pension that would have been payable to the member had he become entitled to the pension mentioned in paragraph (6).

(15) If a member to whom this regulation applies leaves a dependent child but does not leave a surviving spouse, civil partner, or nominated partner, the child allowance, for the 6 months immediately following the member's death, shall be equal to the aggregate of—

- (a) the member's rate of pensionable pay when the member died; and
- (b) the amount of the member's pension (if any) that he was receiving at that time.

(16) Subject to paragraph (17), except where a child allowance is payable at the rate mentioned in paragraph (15), the child allowance in respect of the member's later service shall—

- (a) be paid as a proportion of the rate of pension that would have been payable to the member had he become entitled to the pension mentioned in paragraph (6); and
- (b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (member dies in pensionable employment).

(17) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated the member's previous service and when he died, any child allowance payable under these Regulations shall be calculated according to—

- (a) regulation H4 (member dies after pension becomes payable) in respect of the pension already in payment; and

(b) regulation H3 in respect of later pensionable employment.

(18) If the aggregate of the pensionable service used in the calculation referred to in paragraph (17)(a) and that used in the calculation referred to in paragraph (17)(b) (“the member’s aggregated service”) is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(19) The amount of additional service referred to in paragraph (18) is the difference between 10 years pensionable service and the member’s aggregated service.”

#### Commencement Information

**I61** Reg. 61 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### Amendment of regulation T2A

[<sup>F2</sup>62].—(1) Regulation T2A (deduction of tax: further provisions) is amended as follows.

(2) In paragraph (2) for “Where”, substitute “Subject to paragraph (2A), if”.

(3) After paragraph (2) insert—

“(2A) The member’s present or future benefits in respect of which any charge under paragraph (2) arises shall be reduced by an amount that fully reflects the amount of tax paid by the scheme administrator and shall be calculated by reference to advice provided by the Scheme Actuary for that purpose.”.

**F2** Regs. 62-66: incorrectly numbered regs. 1-5 following reg. 61 renumbered as regs. 62-66 (31.3.2008) by [The National Health Service Pension Scheme \(Correction to Amendment\) Regulations 2008 \(S.I. 2008/906\)](#), [regs. 1\(2\)](#), [2\(3\)](#)

#### Commencement Information

**I62** Reg. 62 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### Amendment of regulation U1A

[<sup>F2</sup>63]. In regulation U1A (determinations by medical practitioners)—

(a) in sub-paragraph (a) after “E2”, insert “or E2A”;

(b) after sub-paragraph (e) insert—

“(f) permanently incapable of regular employment because of physical or mental infirmity for the purposes of regulation E2A(2)(b)(ii),”.

**F2** Regs. 62-66: incorrectly numbered regs. 1-5 following reg. 61 renumbered as regs. 62-66 (31.3.2008) by [The National Health Service Pension Scheme \(Correction to Amendment\) Regulations 2008 \(S.I. 2008/906\)](#), [regs. 1\(2\)](#), [2\(3\)](#)

#### Commencement Information

**I63** Reg. 63 in force at 1.4.2008, see [reg. 1\(2\)](#)

#### Insertion of new regulation U4

[<sup>F2</sup>64]. After regulation U3 (accounts and actuarial reports) insert—

### “Cost sharing

**U4.**—(1) The actuarial report referred to in regulation U3 (accounts and actuarial reports) shall specify—

- (a) a recommended contribution rate (RCR), and
- (b) a projected yield from members’ contributions (PYM).

(2) Paragraphs (3) to (10) apply in respect of the actuarial report covering the period commencing on 1st April 2004 and ending on 31st March 2008 (“the 2004-2008 Report”) and, unless otherwise stated, references to the RCR in those paragraphs are to the RCR specified in the 2004-2008 Report.

(3) Where the RCR differs from 20.5 per cent, that difference shall be the cost change element (CCE).

(4) The Secretary of State shall, having taken advice from the scheme Actuary determine—

- (a) that part of the CCE which shall not be shared between the members and the employing authorities (the un-shared element (USE)), and
- (b) that part of the CCE which shall be shared between the members and the employing authorities (the shared element (SE)),

but before making such a determination, the Secretary of State shall consider any advice relating to the elements referred to in (a) and (b) from such employee and employer representatives as appear to the Secretary of State to be appropriate.

(5) Where RCR minus PYM is less than 14 per cent, contributions paid by employing authorities shall be equal to 14 per cent.

(6) Where RCR minus PYM is equal to or greater than 14 per cent but less than or equal to 14.2 per cent, contributions paid by employing authorities shall be equal to RCR minus PYM.

(7) Where—

- (a) RCR minus PYM is greater than 14.2 per cent, and
- (b) USE is greater than 0.0 per cent

contributions paid by employing authorities shall be equal to the lower of—

- (i) RCR minus PYM and
- (ii) 14.2 per cent + USE.

(8) Where—

- (a) RCR minus PYM is greater than 14.2 per cent, and
- (b) USE is less than or equal to 0.0 per cent,

contributions paid by employing authorities shall be equal to 14.2 per cent.

(9) If RCR is greater than the sum of—

- (a) the rate payable by employing authorities as determined under paragraphs (5) to (8), and
- (b) PYM,

the Secretary of State may—

- (i) after consultation with such representatives of employees and employing authorities as appear to the Secretary of State to be appropriate, and
- (ii) with the consent of the Treasury and on the advice of the Scheme Actuary,

amend member contributions and or benefits so that the rate payable by employing authorities as determined under paragraphs (5) to (8) is equal to Amount A.

(10) For the purposes of paragraph (9)—

- (a) Amount A is the difference between the adjusted RCR and the adjusted PYM, and
- (b) adjusted RCR and adjusted PYM mean the RCR and PYM that would have been specified in the 2004-2008 Report had that Report been drawn up on the basis that any amendment to member contribution rates and scheme benefits made by the Secretary of State pursuant to paragraph (9) had already taken place.

(11) Paragraphs (12) to (17) apply in respect of the actuarial report covering the period commencing on 1st April 2008 and ending on 31st March 2012 and subsequent reports and, unless otherwise stated, references to RCR in those paragraphs are to the RCR recommended in the actuarial report for the relevant period.

(12) Where the RCR specified in the current actuarial report differs from 20.5 per cent, that difference shall be the cost change element (CCE).

(13) The Secretary of State shall, having taken advice from the scheme Actuary determine —

- (a) that part of the CCE which shall not be shared between the members and the employing authorities (the un-shared element (USE)), and
- (b) that part of the CCE which shall be shared between the members and the employing authorities (the shared element (SE)),

but before making such a determination, the Secretary of State shall consider any advice relating to the elements referred to in (a) and (b) from such employee and employer representatives as appear to the Secretary of State to be appropriate.

(14) Where RCR is equal to or greater than 20.5 per cent + USE, contributions paid by employing authorities shall be equal to 14 per cent + USE.

(15) Where RCR is less than 20.5 per cent + USE, contributions paid by employing authorities shall be equal to;

$$RCR - 6.5\% + X$$

Where—

$$\frac{(20.5\% + USE - RCR)}{2}$$

X = and, where X is not a multiple of 0.1 per cent, X is rounded to the nearest odd multiple of 0.1 per cent.

(16) If RCR is not equal to the sum of—

- (a) the rate payable by employing authorities as determined under paragraphs (14) and (15), and
- (b) PYM,

the Secretary of State may—

- (i) after consultation with such representatives of employees and employing authorities as appear to the Secretary of State to be appropriate, and
- (ii) with the consent of the Treasury and on the advice of the Scheme Actuary,

amend member contributions and or benefits so that the rate payable by employing authorities under paragraphs (14) to (15) is equal to Amount B.

(17) For the purposes of paragraph (16)—

- (a) Amount B is the difference between the adjusted RCR and the adjusted PYM, and

- (b) adjusted RCR and adjusted PYM mean the RCR and PYM that would have been specified in the 2004-2008 Report had that Report been drawn up on the basis that any amendment to member contribution rates and scheme benefits made by the Secretary of State pursuant to paragraph (16) had already taken place.
- (18) In this regulation—
  - (a) RCR, PYM, CCE, USE and SE shall be expressed as percentages to the nearest 0.1 per cent,
  - (b) USE may include changes to RCR resulting from changes in—
    - (i) the financial assumptions,
    - (ii) the actuarial methodology,used to calculate RCR for the purposes of the immediately preceding actuarial report under regulation U3 where the current report is not the 2004-2008 Report, or where the 2004-2008 Report is the current report, that Report,
  - (c) SE may include changes to RCR resulting from changes in—
    - (i) the underlying membership data,
    - (ii) the demographic assumptions,used to calculate RCR for the purposes of the immediately preceding actuarial report under regulation U3 where the current report is not the 2004-2008 Report, or where the 2004-2008 Report is the current report, that Report,
  - (d) CCE, USE and SE may be positive or negative.”.

**F2** Regs. 62-66: incorrectly numbered regs. 1-5 following reg. 61 renumbered as regs. 62-66 (31.3.2008) by [The National Health Service Pension Scheme \(Correction to Amendment\) Regulations 2008 \(S.I. 2008/906\)](#), regs. 1(2), **2(3)**

#### **Commencement Information**

**I64** Reg. 64 in force at 1.4.2008, see [reg. 1\(2\)](#)

### **Amendment of Schedule 2**

[<sup>F2</sup>65].—(1) Schedule 2 is amended as follows.

(2) In paragraph 1 (additional definitions used in this Schedule), in sub-paragraph (b) of the definition of “commissioned services”—

- (a) in sub-sub-paragraph (iii), for “paragraph 13 of Schedule 2 to the National Health Service and Community Care Act 1990 (National Health Service trusts—specific powers)” substitute “paragraph 18 of Schedule 4 to the 2006 Act or paragraph 18 of Schedule 3 to the 2006 (Wales) Act”;
- (b) in sub-sub-paragraph (iv), for “section 18(2)(b) of the Health and Social Care (Community Health and Standards) Act 2003” substitute “section 47(2)(b) of the 2006 Act”.

(3) In paragraph 2(1) (application of Regulations with modifications) omit “Health Authority or” (where twice occurring).

(4) In paragraph 2A (Membership: locum practitioners)—

- (a) sub-paragraph (4) is omitted;
- (b) in sub-paragraph (5) for “Except where sub-paragraph (4) applies, no”, substitute “No”.

(5) In paragraph 3(2B)(a)(ii) (meaning of pensionable earnings) after “paternity leave”, insert “, parental leave”.

(6) In paragraph 5(4), (5) and (6)(23) (elections relating to calculation of pensionable earnings in medical partnerships) omit “Health Authority or”.

(7) In paragraph 8(24) (limit on pensionable earnings—dental practitioners)—

(a) in sub-paragraph (2) after “1995”, insert “and ending before 1st April 2008”;

(b) in sub-paragraph (3) omit “Health Authority, or”.

(8) In paragraph 9(25) (officer service treated as practitioner service)—

(a) in sub-paragraph (1) omit “Health Authority,” (where twice occurring);

(b) in sub-paragraph (5) after “E2”, insert “or E2A”;

(c) in sub-paragraph (5A)(b) omit “Health Authority,”;

(d) in sub-paragraph (8) omit “Health Authority or”;

(9) For paragraph 10(2) (contributions to the scheme) substitute—

“(2) The contribution rate for practitioners and non-GP providers is as set out in the following tables.

#### 2007-2008

<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable earnings</i>	<i>Contribution rate</i>
Up to £19,682	5%
£19,683 to £65,002	6.5%
£65,003 to £102,499	7.5%
£102,500 to any higher amount	8.5%

#### 2006-2007

<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable earnings</i>	<i>Contribution rate</i>
Up to £19,165	5%
£19,166 to £63,416	6.5%
£63,417 to £99,999	7.5%
£100,000 to any higher amount	8.5%

#### 2005-2006

<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable earnings</i>	<i>Contribution rate</i>
Up to £18,697	5%
£18,698 to £61,869	6.5%
£61,870 to £97,560	7.5%

(23) Paragraph (5) was amended by [S.I. 2005/661](#).

(24) Paragraph (8) was amended by [S.I. 2002/2469](#).

(25) Paragraph (9) was amended by [S.I. 2006/600](#).



<i>Column 1</i>	<i>Column 2</i>
<i>Amount of pensionable earnings</i>	<i>Contribution rate</i>
£97,561 to any higher amount	8.5%

(2A) The Secretary of State may make a determination substituting any or all of the amounts of pensionable earnings or contribution rates specified in the tables in sub-paragraph (2) with effect from the date specified in the determination, and before making a determination the Secretary of State must consider—

- (a) the advice of the Scheme Actuary, and
- (b) in accordance with regulation U4 (cost sharing), advice from such employee and employer representatives as the Secretary of State considers appropriate.

(2B) If, apart from this paragraph, the earnings for a scheme year in respect of a member’s Practitioner or non-GP provider service would not be a whole number of pounds, those earnings will be rounded down to the nearest whole pound.

(2C) If, in the 2008-2009 scheme year a member is in practitioner and non-GP provider service as well as (concurrently) employment other than as a practitioner in respect of which he is liable to pay contributions in accordance with regulation D1, the contributions payable in respect of the member’s—

- (a) practitioner or non-GP provider service, shall be determined in accordance with the provisions of these regulations that apply to a practitioner or non-GP provider, and
- (b) employment as an officer, shall be determined in accordance with the provisions of these regulations that apply to an officer.

(2D) For the purposes of this paragraph, “zero hours contract” means pensionable employment as an officer in respect of a contract under which—

- (a) an employing authority does not guarantee to provide work for the member;
- (b) there are no specified working hours or working patterns;
- (c) the member is paid only for work actually done under it.

(2E) Sub-paragraphs (2F) to (2O) apply to practitioners (other than a dentist performer) and non-GP providers.

(2F) If the practitioner or non-GP provider—

- (a) was in pensionable employment throughout the 2007–2008 scheme year or began such employment during that year; and
- (b) was in such employment on 1st April 2008,

sub-paragraphs (2G) to (2I) apply.

(2G) If the practitioner or non-GP provider—

- (a) was engaged in pensionable employment as a practitioner or non-GP provider throughout the whole of the 2006-2007 scheme year; and
- (b) has, in accordance with paragraph 23, certified the member’s pensionable earnings for the 2006–2007 scheme year and forwarded a record of those earnings to the host Trust or Board, or is not required to certify earnings in accordance with that paragraph but the host Trust or Board has the member’s final pensionable earnings figure,

the contributions payable for the 2008-2009 scheme year shall be those specified in column 2 of Table 2 in respect of the amount of pensionable earnings referred to in column 1 of

that Table which correspond to the certified or final earnings for the aggregated total of all practitioner or provider sources for the 2006-2007 scheme year.

(2H) If (2G) does not apply and a practitioner or non-GP provider—

- (a) was engaged in pensionable employment as practitioner or non-GP provider throughout the whole of the 2005–2006 scheme year; and
- (b) has, in accordance with paragraph 23, certified the member’s pensionable earnings for the 2005–2006 scheme year and forwarded a record of those earnings to the host Trust or Board, or is not required to certify earnings in accordance with that paragraph but the host Trust or Board has the member’s final pensionable earnings figure,

the contributions payable for the 2008-2009 scheme year shall be those specified in column 2 of Table 3 in respect of the amount of pensionable earnings referred to in column 1 of that Table which correspond to the certified or final earnings for the aggregated total of all practitioner or provider sources for the 2005-2006 scheme year.

(2I) If paragraphs (2G) or (2H) do not apply—

- (a) that practitioner’s or, as the case may be, the non-GP provider’s pensionable earnings in respect of the 2008-2009 scheme year shall be the amount agreed between the host Trust or Board on the one hand and the practitioner or provider on the other as representing their estimate of the practitioner’s or non-GP provider’s earnings from all practitioner or provider sources for that year, and
- (b) contributions payable for that year shall be those specified in column 2 of Table 1 in respect of the amount of pensionable earnings referred to in column 1 of that Table which corresponds to those estimated earnings.

(2J) If the practitioner or non-GP provider commences pensionable employment for the first time (having no earlier practitioner or non-GP provider service) at any time during the 2008–2009 scheme year —

- (a) that practitioner’s or, as the case may be, the non-GP provider’s pensionable earnings for that scheme year shall be the amount agreed between the host Trust or Board on the one hand and the practitioner or provider on the other as representing their estimate of the practitioner’s or non-GP provider’s earnings from all practitioner or provider sources for that year, and
- (b) contributions payable for the 2008-2009 scheme year shall be those specified in column 2 of Table 1 in respect of the amount of pensionable earnings referred to in column 1 of that Table which corresponds to those estimated earnings.

(2K) If a practitioner or non-GP provider—

- (a) commences further pensionable employment as a practitioner or non-GP provider at any time during the 2008-2009 scheme year (“the later employment”);
- (b) has existing or previous employment during that scheme year as a practitioner or as a non-GP provider in respect of which he is, or was, liable to pay contributions in accordance with this paragraph (“the earlier employment”), and
- (c) regardless of whether or not the practitioner or non-GP provider also is, or previously was, in NHS employment other than as a practitioner during the 2008-2009 scheme year,

that practitioner or non-GP provider shall pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment.

(2L) If a practitioner or non-GP provider—

- (a) commences employment as a practitioner or non-GP provider at any time during the 2008-2009 scheme year (“the later employment”);
- (b) has previous employment during that scheme year in respect of which he was liable to pay contributions to the scheme as a dentist performer in accordance with this paragraph (“the earlier employment”); and
- (c) has ceased the earlier employment prior to commencing the later employment, and
- (d) regardless of whether or not the practitioner or non-GP provider also is, or previously was, in NHS employment other than as a practitioner during the 2008-2009 scheme year,

that practitioner or non-GP provider shall pay contributions in respect of the later employment at the same rate determined in accordance with paragraph (2J).

(2M) If a practitioner or non-GP provider—

- (a) commences employment as a practitioner or non-GP provider at any time during the 2008-2009 scheme year (“the later employment”);
- (b) has no previous practitioner or non-GP provider employment in that scheme year;
- (c) has previous employment as an officer on a whole-time or part-time basis employment during that scheme year (excluding any employment under a zero hours contract) in respect of which he was liable to pay contributions to the scheme in accordance with regulation D1 (“the earlier employment”), and
- (d) has ceased the earlier employments prior to commencing the later employment,

that practitioner or non-GP provider shall pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment.

(2N) Where (2M) applies and the practitioner or non-GP provider had two or more earlier officer employments, that practitioner or non-GP provider shall pay contributions in respect of the later employment at the same rate as that which applied to whichever of the earlier officer employments was the last to cease.

(2O) Where (2N) applies and all of the earlier officer employments or the last two of them cease on the same day—

- (a) that practitioner’s or non-GP provider’s pensionable earnings in respect of the later employment referred to in paragraph (2M)(a) shall be the amount agreed between the host Trust or Board on the one hand and the practitioner or provider on the other as representing their estimate of the practitioner’s or provider’s pensionable earnings from all practitioner or provider sources for that year, and
- (b) contributions payable for the 2008-2009 scheme year shall be those specified in column 2 of Table 1 in respect of the amount of pensionable earnings referred to in column 1 of that Table which corresponds to those estimated earnings.

(2P) If a dentist performer—

- (a) was in pensionable employment as a dentist performer throughout the 2007–2008 scheme year or began such employment during that year, and
- (b) was in such employment on 1st April 2008,

sub-paragraphs (2Q) or (2R) apply.

(2Q) If a dentist performer was in pensionable employment as a dentist performer during any part of the 2006–2007 scheme year—

- (a) that performer’s pensionable earnings shall be determined by applying the formula—

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

where—

PER is the total of all dentist performer pensionable earnings received during that part of the scheme year referred to in sub-paragraph (a);

NDPE is the number of days of pensionable employment, and

- (b) the contributions payable for the 2008-2009 scheme year shall be those specified in column 2 of Table 2 in respect of the amount of pensionable earnings referred to in column 1 of that Table corresponding to the practitioner's pensionable earnings for the 2006-2007 scheme year calculated in accordance with sub-paragraph (a).

(2R) If (2Q) does not apply and the dentist performer was engaged in pensionable service as a dentist performer during any part of the 2007-2008 scheme year—

- (a) that performer's pensionable earnings shall be determined by applying the formula—

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

where—

PER is the total of all dentist performer pensionable earnings received during that part of the scheme year referred to in paragraph (2R)(a);

NDPE is the number of days of pensionable employment, and

- (b) the contributions payable for the 2008-2009 scheme year shall be those specified in column 2 of Table 1 in respect of the amount of pensionable earnings referred to in column 1 of that Table which correspond to the performer's pensionable earnings for the 2007-2008 scheme year calculated in accordance with sub-paragraph (a).

(2S) If a dental performer commences pensionable employment for the first time (having no earlier dentist performer employment) at any time during the 2008-2009 scheme year—

- (a) that performer's pensionable earnings shall be determined by applying the formula—

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

where—

EPE is an estimate of the practitioner's pensionable earnings from all sources for the days of pensionable employment in the 2008-2009 scheme year; and

NDPE is the number of days of pensionable employment, and

- (b) contributions payable shall be those specified in column 2 of Table 1 in respect of the amount of pensionable earnings referred to in column 1 of that Table corresponding to the practitioner's pensionable earnings for the 2008-2009 scheme year calculated in accordance with this sub-paragraph.

(2T) If a dentist performer—

- (a) commences further pensionable employment as a dentist performer at any time during the 2008-2009 scheme year ("the later employment"); and

- (b) has existing or previous pensionable employment during that scheme year as a dentist performer in respect of which he is, or was, liable to pay contributions in accordance with this paragraph (“the earlier employment”),

that dentist performer shall pay contributions in respect of the later employment at the same rate as that which applied to the earlier employment.

(2U) If a dentist performer—

- (a) commences employment as a dentist performer at any time during the 2008-2009 scheme year (“the later employment”);
- (b) has previous employment during that scheme year in respect of which he was liable to pay contributions to the scheme as a practitioner (other than a dentist performer) or a non-GP provider in accordance with this paragraph (“the earlier employment”);
- (c) has ceased the earlier employment prior to commencing the later employment, and
- (d) regardless of whether or not the practitioner or non-GP provider also is, or previously was, in NHS employment other than as a practitioner during the 2008-2009 scheme year,

that dentist performer shall pay contributions in respect of the later employment at the same rate determined in accordance with paragraph (2J).

(2V) If a dentist performer—

- (a) commences employment as a practitioner or non-GP provider at any time during the 2008-2009 scheme year (“the later employment”);
- (b) has no dentist performer employment in that scheme year;
- (c) has previous employment as an officer on a whole-time or part-time basis during that scheme year (excluding any employment under a zero hours contract) in respect of which he was liable to pay contributions to the scheme in accordance with regulation D1 (“the earlier employment”), and
- (d) has ceased the earlier officer employments prior to commencing the later employment,

that dentist performer shall pay contributions in respect of the later employment at the same rate as that which applied to the earlier officer employment.

(2W) Where (2V) applies and the dentist performer had two or more earlier officer employments, that dentist performer shall pay contributions in respect of the later employment referred to in (2V)(a) at the same rate as that which applied to whichever of the earlier officer employments was the last to cease.

(2X) Where (2V) applies and all of the earlier officer employments referred to in (2V) (c) or the last two or more of them cease on the same day—

- (a) that performer’s pensionable earnings shall be determined by applying the formula—

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

where—

EPE is an estimate of the total of all dentist performer pensionable earnings received for the days of pensionable employment in the 2008–2009 scheme year; and

NDPE is the number of days of pensionable employment, and

(b) contributions payable shall be those specified in column 2 of Table 1 in respect of the amount of pensionable earnings referred to in column 1 of that Table corresponding to the practitioner's pensionable earnings for the 2008–2009 scheme year calculated in accordance with this sub-paragraph.

(2Y) Where, at any time during the 2008-2009 scheme year, a practitioner (other than a dentist performer) also commences employment as a dentist performer (or vice versa) the employment as a practitioner (other than as a dentist performer) and the employment as a dentist performer will be treated separately under this paragraph.

(2Z) If none of the previous sub-paragraphs of this paragraph apply, for the purpose of determining a member's relevant contribution rate the Secretary of State must determine the amount of the member's pensionable pay to be attributed to the 2008-2009 scheme year and, in so doing shall, in addition to the matters referred to in paragraph (2A), 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.”.

(10) In paragraph 10(3)(a) omit “and reaches age 65”.

(11) For paragraph 11(2) (Normal retirement pension) substitute—

“(2) In respect of —

(a) any scheme year prior to the 2008-2009 scheme year, the member's uprated earnings have been uprated in the manner determined by the Secretary of State having consulted such professional organisations as the Secretary of State considered appropriate;

(b) the 2008-2009 scheme year and any later scheme year, the member's uprated earnings are to be calculated by uprating the member's pensionable earnings by the amount of the annual increase due under the provisions of the Pensions (Increase) Act 1971 and section 59 of the Social Security Pensions Act 1975, plus 1.5 per cent annually.

(3) Nothing in this paragraph shall be taken to require the Secretary of State to revisit the calculation of uprated earnings referred to in sub-paragraph (2)(a).”.

(12) In paragraph 12—

(a) for “regulation E2 (early retirement pension on grounds of ill health) is”, substitute “regulations E2 and E2A are”;

(b) for “that regulation”, substitute “regulation E2 or paragraphs (4) to (6) of regulation E2A”.

(c) after sub-paragraph (2), insert—

“(3) Regulation E2A is modified so that the definition of “regular employment of like duration” in paragraph (18) of that regulation means such employment as the Secretary of State considers would involve a similar level of engagement in the member's current pensionable service as a practitioner.”.

(13) After paragraph 16A (increased surviving civil partner's pension) substitute—

**“Increased dependent surviving nominated partner's pension**

**16B.** In the case of a member who made a nomination under regulation G15 (dependent surviving nominated partner's pension) that regulation is modified so that the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service before 6 April 1988 plus the relevant daily proportion for each additional day.

### **Increased surviving partner pension**

**16C.** In the case of a member who made an election under regulation G17 (increased surviving partner's pension) that regulation is modified so that the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service before 6 April 1988 plus the relevant daily proportion for each additional day."

(14) For paragraph 17 (child allowance—member dies in pensionable employment) substitute—

### **“Child allowance—member dies in pensionable employment**

**17.** In the case of members who die in pensionable employment as practitioners—

- (a) paragraphs (4C), (4D), (6) and (7) of regulation H3 (member dies in pensionable employment) are modified so that the references to the rate of the member's pensionable pay when he died is treated, in relation to the member's employment as a practitioner, as references to the average rate of the member's pensionable earnings during the last complete quarter before the member died;
- (b) paragraphs (10) and (12) of that regulation is modified so that the reference to the member's final year's pensionable pay when he died is treated as a reference to the yearly average of the member's uprated earnings at the date of death."

(15) After paragraph 17 (child allowance – member dies in pensionable employment), insert—

### **“Preserved pension**

**17A.** Regulation L1 is modified so that the definition of “regular employment of like duration” in paragraph (14) of that regulation means such employment as the Secretary of State considers would involve a similar level of engagement to the member's pensionable service as a practitioner immediately before that service ceased."

(16) Paragraph 19(6) (members absent from work) is omitted.

(17) After paragraph 22 (reduction of pension on return to NHS employment) insert—

### **“Benefits on death in pensionable employment after pension becomes payable**

**22A.** The following provisions are modified so that the reference to the member's rate of pensionable pay when he dies is treated as a reference to the average rate of the member's pensionable earnings during the last complete quarter before the member died—

- (a) paragraphs (7) and (12) of regulation S4 (benefits on death in pensionable employment after pension under regulation E2 becomes payable); and
- (b) paragraphs (10) and (15)(a) of regulation S4A (benefits on death in pensionable employment after pension under regulation E2A becomes payable)".

**F2** Regs. 62-66: incorrectly numbered regs. 1-5 following reg. 61 renumbered as regs. 62-66 (31.3.2008) by [The National Health Service Pension Scheme \(Correction to Amendment\) Regulations 2008 \(S.I. 2008/906\)](#), regs. 1(2), **2(3)**

### **Commencement Information**

**I65** Reg. 65 in force at 1.4.2008, see [reg. 1\(2\)](#)

## Amendment of Schedule 2A

[<sup>F2</sup>66].—(1) Schedule 2A(26) is amended as follows.

(2) In paragraph 1(2)(a) (discharge of liability in respect of a pension credit following the death of the person entitled to the pension credit) for “paragraph 11”, substitute “paragraph 9”.

(3) In paragraph 9 (payment of lump sum on death)—

(i) in sub-paragraph (c) omit “and (3B)”;

(ii) for sub-paragraph (d) substitute—

“(d) the reference in paragraph (3C) to “the member who is in pensionable service under the scheme” shall be a reference to “person entitled to a pension credit or, as the case may be, a pension credit member”.

(4) In paragraph 9 for sub-paragraphs (b), (c) and (d) substitute—

“(b) the reference in paragraphs (2), (3), (4) and (5) of that regulation to “member” shall be a reference to “person entitled to a pension credit or, as the case may be, the pension credit member”;

(c) the reference in paragraphs (2), (3), (4) and (10) of that regulation to “member’s personal representative” shall be a reference to “personal representative of the person entitled to a pension credit or, as the case may be, the pension credit member.”;

(d) for paragraph (6) substitute—

“(6) A nomination shall be given only by a person entitled to a pension credit, or as the case may be, a pension credit member under the scheme.”;

(e) for paragraph (9) substitute—

“(9) A person entitled to a pension credit, or as the case may be, a pension credit member whose credit was implemented on, or after, 1st April 2008 cannot give a notice referred to in paragraph (3)(a).”;

(f) in paragraph (12) omit sub-paragraph (d)”.

**F2** Regs. 62-66: incorrectly numbered regs. 1-5 following reg. 61 renumbered as regs. 62-66 (31.3.2008) by [The National Health Service Pension Scheme \(Correction to Amendment\) Regulations 2008 \(S.I. 2008/906\)](#), regs. 1(2), **2(3)**

### Commencement Information

**I66** Reg. 66 in force at 1.4.2008 but reg. 66(2)(3) has effect from 1.4.2003 in accordance with reg. 1(2), see [reg. 1\(2\)](#)

Signed by authority of the Secretary of State for Health.

11th March 2008

*Ann Keen*  
Parliamentary Under-Secretary of State  
Department of Health



We consent

11th March 2008

*Alan Campbell*  
*Frank Roy*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This Instrument further amends the National Health Service Pension Scheme Regulations 1995 (S.I.1995/300) (“the 1995 Regulations”).

Regulation 2 amends Part A of the 1995 Regulations by inserting new definitions including a definition of “scheme year”.

Regulations 3 and 4 amend Part B of the 1995 Regulations. Regulation 3 provides for new restrictions on membership of the 1995 NHS Pension Scheme and, in particular, provides that a person over the age of 75 or a person over the age of 70 on or before 31 March 2008 cannot be a member of the Scheme. Regulation 4 makes consequential amendments.

Regulations 5 and 6 amend Part C of the 1995 Regulations. Regulation 5 provides for the calculation of pensionable pay and makes provision for the calculation of pay of a member credited with pensionable service under another public sector pension scheme. Regulation 6 provides that benefits are to be calculated by a maximum period of pensionable service (45 years in most cases) and provides that pensionable service in excess of the maxima will be ignored.

Regulations 7 and 8 amend Part D of the 1995 Regulations. Regulation 7 introduces new contribution rates linked to bands of pensionable pay. Those rates run from 5 per cent to 8.5 per cent (depending on the pay band). Regulation 8 makes consequential amendments to regulation D2 in respect of contributions payable by employing authorities.

Regulations 9 to 14 amend Part E of the 1995 Regulations. Regulation 9 amends regulation E1 so as to provide that the Secretary of State can discharge her liability for a pension by the payment of a lump sum and in doing so has to have regard to the life expectancy of a member. Regulation 10 amends regulation E2 so as to limit its application to a member who retires from pensionable employment on or after 1 April 2008 but submitted an application for the benefit prior to that date.

Regulation 11 inserts new regulations E2A to E2C which introduce a new two tier ill health pensions on early retirement, reassessment of an ill health pension awarded on early retirement and the effect of further employment on such a benefit. Regulation 12 makes a consequential amendment to regulation E3, regulation 13 omits regulation E4 and regulation 14 inserts a new regulation (E7) which enables a member to opt to exchange part of a pension for a lump sum payment.

Regulations 15 to 17 amend Part F of the 1995 Regulations. Regulation 15 amends regulation F1 so as to provide when a lump sum on death is payable, regulation 16 amends regulation F2 to take account of the new two tier ill health pension and regulation 17 substitutes regulation F5 to provide for an order of priority in respect of the payment of a lump sum death benefit.

Regulations 18 to 29 amend Part G of the 1995 Regulations. In particular, they make provision for the period over which a widow’s pension is paid and the rate at which is payable.

Regulation 21 amends regulation G3 to take account of the new two tier ill health pension. Regulation 22 amends regulation G4 to provide that where a member dies with a preserved pension, the rate of the dependant’s will be determined by reference to an ill health pension he would have received had he retired through ill health on the day he left pensionable employment. Regulation 23 amends regulation G7 to provide that the whole of the member’s pensionable service will be taken into account when calculating a widower’s pension. Regulation 24 amends regulation G8 to take account of the new two tier ill health pension. Regulation 25 amends regulation G9 to provide for the payment of a pension to a surviving partner of a female member. Regulation 26 amends regulation G10 to take account of the two tier ill health pension. Regulation 27 amends regulation G11 to take account

of the two tier ill health pension. Regulation 28 amends regulation G13 to provide for the devolution of a surviving civil partner's pension in cases where the member dies without leaving a civil partner but leaving a surviving widower or nominated partner.

Regulation 29 inserts new regulations G14 to G17 to make provision for a surviving nominated partner's pension on the same basis as a surviving civil partner's or surviving spouse's pension.

Regulation 30 to 34 amends Part H of the 1995 Regulations. Regulation 30 amends regulation H1 so as to take account of nominated partner's pensions and to define a dependant child. Regulation 31 amends regulation H3 to provide for the destination of a pension payable in respect of dependents where the member dies in pensionable employment. Regulation 32 amends regulation H4 to provide for the calculation of a pension in circumstances where a member dies after the pension becomes payable. Regulation 33 amends regulation H5 to make similar provision where a member dies with a preserved pension and regulation 34 amends regulation H7 to take account of nominated partner pensions.

Regulation 35 amends regulation J1 of the 1995 Regulations to take account of the 45 year pensionable service limit in the scheme.

Regulations 36 and 37 amend Part K of the 1995 Regulations. Regulation 36 substitutes regulation K1 so as to provide that the scheme will be administered in conformity with the contracting-out conditions applicable to occupational pension schemes and regulation 37 amends regulation K2 so as to carry that principle forward in relation to both guaranteed minimum pensions and rights under section 9(2B) of the Pensions Act 1995.

Regulations 38 to 40 amend Part L of the 1995 Regulations. Regulation 38 amends regulation L1 to provide when a pension and lump sum will be payable in respect of those who have a preserved pension and to determine when a member with a preserved pension shall be treated as being incapable of any regular employment. Regulation 39 amends regulation L2 in consequence of the amendments made to Part K (contracting-out) of the 1995 Regulations. Regulation 40 amends regulation L4 to take account of the two tier ill health pension.

Regulation 41 substitutes the whole of Part M of the 1995 Regulations. Substituted regulation M1 deals with the member's right to a transfer or buy-out, M2 with exercising the right to transfer or buy-out, M3 with the amount of the member's cash equivalent on such a transfer or buy-out, M4 on the mechanism for applying for a transfer value payment, M5 with the time limits involved in making such an application and M6 with bulk transfers.

Regulations 42 and 43 amend Part N of the 1995 Regulations. The amendments are consequential and in the case of regulation 43 omit regulation N5 (waiver of transfer payments).

Regulation 44 amends regulation P2 of the 1995 Regulations to provide that a period of absence continues to count as pensionable service but it does not exceed 6 months and the member continues to contribute to the scheme.

Regulations 45 to 51 amend Part Q of the 1995 Regulations. Regulation 45 amends regulation Q1 to provide when a member can increase his rights to benefit by purchasing additional service. Regulation 47 amends regulation Q4 to provide new time limits for the purchasing of additional service and the cost of doing so. Regulation 48 amends regulation Q5 to impose time limits for the making of an election to pay for an unreduced lump sum by a single payment and regulation 49 amends regulation Q6 to provide for the limits on the amount of pensionable pay which may be used to purchase additional service or unreduced retirement lump sum by regular contribution payments. Regulation 51 inserts new regulations Q8 to Q17 which provide for the facility to purchase additional pension. New regulation Q8 deals with an option to purchase additional pension, Q9 with the effect of being absent or leaving and rejoining the scheme during the option period referred to in Q8, Q10 deals with the facility to purchase additional pension by the payment of a lump sum (as does Q11 in respect of employing authorities), Q12 with the procedure for and effect of making an option under regulations Q8, Q10 and Q11, Q13 with the cancellation and cessation of an option, Q14 with the effect of the payment of additional contributions, Q15 with the effect of death or early payment

of a pension after an option has been exercised, Q16 with the effect of part payment of periodical contributions and Q17 with the revaluation of increases bought under options.

Regulations 52 to 55 amend Part S of the 1995 Regulations. Regulation 52 amends regulation R3 to take account of the new tier 2 ill health pension. Regulation 53 amends regulation R4 to allow for a pension to come into payment at age 75. Regulation 54 amends regulation R5 to also take account of the new tier 2 ill health pension. Regulation 55 amends regulation R9 to provide for the protection of pension rights if a member approaching retirement takes up less demanding duties.

Regulations 56 to 61 amend Part S of the 1995 Regulations. Regulation 56 amends regulation S1 to provide that a pension which has been suspended on return to NHS employment may again become payable in certain specified circumstances. Regulation 57 amends regulation S2 to set out the circumstances when certain pensions payable under other parts of the 1995 Regulations will be reduced upon return to NHS employment and the amount by which they will be so reduced. Regulation 58 inserts a new regulation S3A to deal with the effect of a return to service on a tier 1 or tier 2 ill health pension. Regulation 59 makes consequential amendments to S4. Regulation 60 amends regulation S4 detailing the amount of and length of a payment made to a surviving spouse or civil partner or nominated partner. Regulation 61 inserts a new regulation S4A to deal with benefits on death in pensionable employment after a pension under regulation E2A becomes payable.

Regulation 62 amends regulation T2A of the 1995 Regulations to provide that present or future benefits of a member are to be reduced by an amount which fully reflects the amount of tax paid by the scheme administrator.

Regulations 63 and 64 amend Part U of the 1995 Regulations. Regulation 63 amends regulation U1A so as to provide that medical practitioners can determine if a member is permanently incapable of regular employment in connection with an ill health pension. Regulation 64 inserts a new regulation U4 to provide for cost sharing of scheme expenses between members of the scheme and employing authorities.

Regulation 65 amends Schedule 2 to the 1995 Act which modifies the application of the 1995 Regulations in respect of practitioners. In particular, the amendments to Schedule 2 introduce a new contribution rate for practitioners based on pensionable earnings. Those rates run from 5 per cent to 8.5 per cent. The amendments also give effect to nominated partner's pensions, increase in surviving partner pensions and increases in the amounts of child allowance payable where a practitioner dies whilst in pensionable employment.

Regulation 66 amends Schedule 2A to the 1995 Regulations which deals with pension sharing on divorce. The amendments are consequential on changes made elsewhere in the scheme.

A full impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities or the voluntary sector.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Pension Scheme (Amendment) Regulations 2008.