

2009 No. 2446

**NATIONAL HEALTH SERVICE, ENGLAND AND
WALES**

**The National Health Service Pension Scheme, Injury Benefits
and Additional Voluntary Contributions (Amendment)
Regulations 2009**

<i>Made</i> - - - -	<i>4th September 2009</i>
<i>Laid before Parliament</i>	<i>9th September 2009</i>
<i>Coming into force</i> - -	<i>1st October 2009</i>

The Secretary of State for Health, with the consent of the Treasury, makes the following Regulations in exercise of the powers conferred by sections 10(1) and (2), 12(1), (2) and (4) of, and Schedule 3 to, the Superannuation Act 1972(a).

In accordance with section 10(4) of that Act, the Secretary of State has consulted with representatives of persons likely to be affected by these Regulations, as appeared to the Secretary of State to be appropriate.

PART 1

Introductory

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Health Service Pension Scheme, Injury Benefits and Additional Voluntary Contributions (Amendment) Regulations 2009.

(2) These Regulations shall come into force on 1st October 2009 and, save as provided in paragraphs (3) and (4), shall have effect from 1st October 2009.

(3) The following regulations shall have effect from 1st April 2008—

- (a) regulation 6;
- (b) regulation 7;
- (c) regulation 13(d);
- (d) regulation 16(4) insofar as it relates to new sub-paragraph (11)(a) of regulation 2.A.10 of the National Health Service Pension Scheme Regulations 2008;

(a) 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 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. As to Treasury consent, 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).

- (e) regulation 53(4)(b);
 - (f) regulation 59;
 - (g) regulation 66;
 - (h) regulation 85(2) insofar as it relates to new sub-paragraph (2)(b) of regulation 3.E.19 of the National Health Service Pension Scheme Regulations 2008;
 - (i) regulation 104, and
 - (j) regulation 105.
- (4) The following regulations shall have effect from 1st April 2009—
- (a) regulation 30(2), and
 - (b) regulation 72(2).

PART 2

Amendment of the National Health Service Pension Scheme Regulations 1995

Interpretation of Part 2

2. The National Health Service Pension Scheme Regulations 1995(a) shall be amended as follows.

Amendment of regulation A2

3. In regulation A2 (interpretation) in the definition of—
- (a) “pensionable employment”, after “the Scheme” insert “in accordance with this Section”;
 - (b) “Scheme”, after “these Regulations” insert “and the National Health Service Pension Scheme Regulations 2008”.

Amendment of regulation E2B

4. In paragraph (2) of regulation E2B (re-assessment of ill-health condition determined under regulation E2A)—

- (a) at the end of sub-paragraph (c), omit “and”;
- (b) at the end of sub-paragraph (d), insert—
 - “; and
 - (e) the member is not a 2008 Section Optant within the meaning of regulation 2.K.1 or 3.K.1 of the 2008 Section of the Scheme (application of Chapter 2.K and Chapter 3.K, respectively) who has become entitled to a tier 2 ill-health pension under regulation 2.D.8 or 3.D.7 of that Section (which deal with early retirement on ill-health (active members and non contributing members)).”.

Amendment of regulation G3

5. For paragraph (3) of regulation G3 (member dies after pension becomes payable), substitute—

“(3) For the purposes of paragraph (2), no account will be taken of any reduction to the member’s pension under regulation S2 unless—

(a) S.I. 1995/300, as modified by S.I. 1996/971 and amended by S.I. 1997/80 and 1888, 1998/666 and 2216, 2000/605, 2001/1428 and 3649, 2002/561 and 2469, 2003/631 and 2322, 2004/665 and 696, 2005/661 and 3074, 2006/600 and 2919, 2007/2054 and 3280, 2008/654 and 2263 and 2009/381.

- (a) the member is a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme, and
- (b) on the date of the member's death the member is an active or non-contributing member of that Section.”.

Amendment of regulation G14

6. In paragraph (1) of regulation G14 (surviving nominated partner's pension), for “who has pensionable service” substitute “whose pensionable employment ceases”.

Amendment of regulation H3

7. In paragraph (2A)(b) of regulation H3 (member dies in pensionable employment), omit “the member's”.

Amendment of regulation H4

8. For paragraph (2) of regulation H4 (member dies after pension becomes payable), substitute—

“(2) Subject to paragraphs (2A) and (8)—

- (a) the allowance will be calculated as described in whichever of paragraphs (3) or (4) apply, and
- (b) where the member was, on the date of the member's death—
 - (i) not a 2008 Section Optant within the meaning of regulation 2.K.1 or regulation 3.K.1 of the 2008 Section of the Scheme (application of Chapter 2.K and Chapter 3.K, respectively), whose pensionable service—
 - (aa) equalled, or exceeded, 10 years, as a proportion of the amount of the member's pension based on that service;
 - (bb) was less than 10 years, as a proportion of the amount the member's pension would have been if it had been based on 10 years pensionable service;
 - (ii) such a 2008 Section Optant, as a proportion of the amount of the member's pension.”.

Amendment of Schedule 2

9.—(1) Schedule 2 (Medical and Dental Practitioners) shall be amended as follows.

(2) In paragraph 9 (officer service treated as practitioner service)—

- (a) in sub-paragraph (1), omit “type 1” (twice);
- (b) in sub-paragraph (3)(a), omit “principal”;
- (c) in sub-paragraph (3)(b), omit “type 1”;
- (d) in sub-paragraph (5A)(a), omit “type 1”;
- (e) after sub-paragraph (5B), insert—

“(5C) If—

- (a) any part of the period of a member's officer service is treated as practitioner service for the purposes of sub-paragraph (1) or (5A) (“the converted service”) and,
- (b) any part of the converted service has been credited to the member as a result of a transfer-in under regulations N2 or N3 (but not regulation R8(2)) (“the converted service credit”),

the amount of pensionable pay deemed to be received in respect of the converted service credit will be calculated in accordance with paragraph 18 of this Schedule.”;

- (f) in sub-paragraph (8), for “been a type 1 practitioner” substitute “officer service before first becoming a practitioner”.

(3) In paragraph 11A (practitioners with benefits from both practitioner and officer service) after sub-paragraph (5), insert—

“(6) A member who, before commencing the member’s final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—

- (a) that officer service is preceded by an earlier period of practitioner service, and
(b) some or all of the officer service is not concurrent with practitioner service,

shall, if it would be more favourable, be entitled to receive a separate pension and retirement lump sum for such part of that officer service that is not concurrent with the member’s practitioner service.

(7) The amounts of the pension and retirement lump sum referred to in sub-paragraph (6)—

- (a) shall be subject to a 1.5% increase for each whole year or part of a year within the increment period,
(b) that increase shall be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act 1971(a), and
(c) that increase shall be effective immediately before the pension and lump sum become payable under these Regulations.

(8) The increment period referred to in sub-paragraph (7) shall—

- (a) begin with the day immediately following the day on which the member’s service as an officer referred to in sub-paragraph (6) ceased for the last time, and
(b) end with the day immediately before the pension and retirement lump sum become payable under these Regulations.”.

Schedule

10. Schedule 1 shall have effect.

PART 3

Amendment of the National Health Service Pension Scheme Regulations 2008

Interpretation of Part 3

11. The National Health Service Pension Scheme Regulations 2008(b) shall be amended as follows.

Amendment of regulation 1.B.3

12. In paragraphs (1) and (3) of regulation 1.B.3 (provision of information relevant for tax purposes), for “these Regulations” substitute “this Section of the Scheme”.

Amendment of regulation 2.A.1

13. Regulation 2.A.1 (interpretation: general) shall be amended as follows—

(a) 1971 c.56.
(b) S.I. 2008/653.

- (a) at the appropriate place in the alphabetical order, insert—
 - ““2008 Section Optant” has the meaning given in regulation 2.K.1;
 - “the 1995 Section” means the section of the National Health Service Pension Scheme for England and Wales set out in the National Health Service Pension Scheme Regulations 1995;
 - “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(a);
 - “pension debit member” means a member of this Section of the Scheme whose benefits, or future benefits, under this Scheme have been reduced under section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage), whether before or after the member became a member of this Section of the Scheme;”;
- (b) omit the definition of “NHS Pension Scheme 1995”;
- (c) for the definition of “the Scheme”, substitute—
 - ““the Scheme” means the National Health Service Pension Scheme for England and Wales;”;
- (d) in the definition of “host Trust or Board”, after “this Part” insert “except where regulation 2.C.5(7) or (8) applies”.

Amendment of regulation 2.A.2

14. In paragraph (1) of regulation 2.A.2 (meaning of “pensionable service”)—

- (a) at the end of sub-paragraph (b), omit “and”;
- (b) after sub-paragraph (c), insert—
 - “; and
- (d) any period of pensionable service the member is entitled to count under Chapter 2.K.”.

Amendment of regulation 2.A.5

15. In paragraph (1) of regulation 2.A.5 (meaning of “qualifying service”)—

- (a) at the end of sub-paragraph (d), omit “and”;
- (b) after sub-paragraph (f), insert—
 - “; and
- (g) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 2.K.”.

Amendment of regulation 2.A.10

16.—(1) Regulation 2.A.10 (meaning of “reckonable pay”: general) shall be amended as follows.

- (2) In paragraph (2), after “2.A.14” insert “, 2.K.7 and 2.K.9 to 2.K.11”.
- (3) In the definition of “IRP” in paragraph (3), after “paragraph” insert “(4),”.
- (4) After sub-paragraph (10), insert—
 - “(11) For the purposes of this regulation, pensionable service does not include—
 - (a) any period of pensionable service that a member is entitled to count under Chapter 2.F unless the transfer value payment in respect of that service is accepted from a corresponding 2008 scheme;

(a) 2000 (c.7).

- (b) any period of pensionable service that a 2008 Section Optant is entitled to count under—
 - (i) regulation 2.K.3;
 - (ii) regulation 2.K.5, or
 - (iii) regulation 2.K.13.”.

Amendment of regulation 2.B.1

17. In paragraph (5) of regulation 2.B.1 (eligibility: general)—

- (a) in sub-paragraphs (b) and (c), for “NHS Pension Scheme 1995” insert “the 1995 Section”;
- (b) for sub-paragraph (e)(ii), substitute—
 - “(ii) became a deferred member of that Section on leaving that employment and has not since become a pensioner member of that Section between the date of leaving that employment and joining this Section of the Scheme, and”.

New regulation 2.B.1A

18. After regulation 2.B.1 (eligibility: general), insert—

“2.B.1A Eligibility: transitional

- (1) A person is eligible to be an active member of this Section of the Scheme if—
 - (a) the Secretary of State has accepted that person’s option to join this Section of the Scheme under Chapter 2.K, and
 - (b) that person is not prevented by regulation 2.B.2, 2.B.3 or 2.B.6 from doing so.
- (2) If a person referred to in paragraph (1)—
 - (a) is entitled to a tier 1 ill-health pension under regulations E2A(3)(a) of the 1995 Regulations (ill-health pension on early retirement), and
 - (b) as the result of a determination made by the Secretary of State under regulation E2B(3) of those Regulations (re-assessment of ill health condition determined under regulation E2A), that person becomes entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension,

that person shall cease to be eligible to be an active member of this Section of the Scheme from the date the Secretary of State makes that determination.”.

Amendment of regulation 2.C.5

19. After paragraph (6) of regulation 2.C.5 (contributions by employing authorities: general), insert—

- “(7) If a non-GP provider is—
 - (a) an employing authority which is a GMS practice, a PMS practice or an APMS contractor, or
 - (b) a shareholder in such an employing authority,

that non-GP provider must pay C5 contributions to the host Trust or Board.

This is subject to paragraph (8).

(8) If a non-GP provider is a shareholder or partner in one or more employing authority referred to in paragraph (7), each employing authority must pay C5 contributions on any pensionable earnings it pays to the non-GP provider or, as the case may be, on the non-GP provider’s share of the partnership profits, to the host Trust or Board.”.

Amendment of regulation 2.C.8

20. After paragraph (8) of regulation 2.C.8 (member’s option to pay additional periodical contributions to purchase additional pension), insert—

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

Amendment of regulation 2.C.10

21. After paragraph (6) of regulation 2.C.10 (member’s option to pay lump sum contribution to purchase additional pension), insert—

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

Amendment of regulation 2.C.11

22. After paragraph (5) of regulation 2.C.11 (payment of additional lump sum contributions by employing authority), insert—

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

Amendment of regulation 2.C.14

23.—(1) Regulation 2.C.14 (effect of payment of additional contributions under this Chapter) shall be amended as follows.

(2) In paragraph (3), after—

(a) “Chapter 2.D” insert “or Chapter 2.K”;

(b) “2.D.5” insert “and 2.K.21”.

(3) After paragraph (10), insert—

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

Amendment of regulation 2.C.16

24. After paragraph (5) of regulation 2.C.16 (effect of part payment of periodical contributions), insert—

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

Amendment of regulation 2.D.1

25. After paragraph (7) of regulation 2.D.1 (normal retirement pensions), insert—

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

Amendment of regulation 2.D.3

26. After paragraph (4) of regulation 2.D.3 (late payment of pension with actuarial increase), insert—

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

Amendment of regulation 2.D.4

27. After paragraph (4) of regulation 2.D.4 (early payment of pensions with actuarial reduction), insert—

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

Amendment of regulation 2.D.5

28. After paragraph (9) of regulation 2.D.5 (partial retirement (members aged at least 55)), insert—

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

Amendment of regulation 2.D.8

29.—(1) Regulation 2.D.8 (early retirement on ill-health (active members and non-contributing members)) shall be amended as follows.

(2) For paragraph (5)(b), substitute—

“(b) is not increased by the enhancement period in the circumstances referred to in (a) if—

- (i) the member’s pensionable service before and after the break is treated separately under regulation 2.G.2; or
- (ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 2.K.7.”.

(3) In paragraph (17), for the definition of “permanently” substitute—

““permanently” means—

- (a) the period until age 65, and
- (b) in the case of a 2008 Section Optant who, before joining this Section of the Scheme, was assessed by a medical adviser as being—
 - (i) permanently incapable of efficiently discharging their duties for the purposes of regulation E2A(2)(b)(i) of the 1995 Regulations (ill-health pension on early retirement), that Optant shall be deemed to be permanently incapable of discharging the duties of the Optant’s employment efficiently for the purposes of paragraph (2)(a) of this regulation;
 - (ii) permanently incapable of regular employment of like duration for the purposes of regulation E2A(2)(b)(ii) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a) of this regulation;”.

(4) After paragraph (17), insert—

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

Amendment of regulation 2.D.9

30.—(1) Regulation 2.D.9 (re-assessment of entitlement to an ill-health pension determined under regulation 2.D.8) shall be amended as follows.

(2) For paragraph (2), substitute—

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

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

- (b) the application for a review is accompanied by further written medical evidence—
 - (i) relating to whether the condition in regulation 2.D.8(3)(a) is satisfied at the date of the Secretary of State’s review; and
 - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 2.D.8(2)(a);
 - (c) no previous application for a review has been made under this paragraph, and
 - (d) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 2.G.5.”.
- (3) After paragraph (3), insert—
- “(4) In the case of a 2008 Section Optant, this regulation is subject to regulations 2.K.16 and 2.K.17.”.

Amendment of regulation 2.D.10

31. After paragraph (9) of regulation 2.D.10 (early retirement on ill-health (deferred members)), insert—
- “(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.D.11

32. After paragraph (8) of regulation 2.D.11 (early retirement on termination of employment by employing authority), insert—
- “(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.12.”.

Amendment of regulation 2.D.14

33. After paragraph (9) of regulation 2.D.14 (general option to exchange part of pension for lump sum), insert—
- “(10) In the case of a 2008 Section Optant, this regulation is subject to paragraph (4) of regulation 2.K.8 and regulation 2.K.12.”.

Amendment of regulation 2.D.16

34. For regulation 2.D.16 (reduction in pension debit member’s benefits), substitute—
- “2.D.16 Reduction in pension debit member’s benefits**
- (1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under section 31 of the 1999 Act.
- (2) In the case of a 2008 Section Optant, this regulation is subject to paragraph (2) of regulation 2.K.8.”.

Amendment of regulation 2.E.2

35. After paragraph (2) of regulation 2.E.2 (meaning of “surviving nominated partner”), insert—
- “(3) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.20.”.

Amendment of regulation 2.E.3

- 36.—(1) Regulation 2.E.3 (amount of pensions under regulation 2.E.1: active and non-contributing members) shall be amended as follows.
- (2) At the end of paragraph (2), insert (as full out words) “Sub-paragraph (b) is subject to paragraph (7).”.

(3) At the end of paragraph (3), insert (as full out words) “This is subject to paragraph (7).”.

(4) After paragraph (6), insert—

“(7) For the purposes of paragraphs (2)(b) and (3) any increase under—

(a) regulation 2.D.3, or

(b) regulation 2.K.21,

is ignored.”.

Amendment of regulation 2.E.4

37.—(1) Regulation 2.E.4 (amount of pensions under regulation 2.E.1: pensioner members) shall be amended as follows.

(2) For paragraph (3), substitute—

“(3) For the purposes of paragraph (1) any reduction in the rate of the member’s pension under—

(a) Chapter 2.H,

(b) regulation 2.D.14, or

(c) regulation 2.K.12,

is ignored.

(3A) For the purpose of paragraph (2)—

(a) any reduction in the rate of the member’s pension under—

(i) regulation 2.D.4,

(ii) regulation 2.D.14, or

(iii) regulation 2.K.12; and

(b) any increase in the rate of the member’s pension under—

(i) regulation 2.D.3, or

(ii) regulation 2.K.21,

is ignored.”.

(3) Omit paragraph (8).

Amendment of regulation 2.E.7

38. For paragraph (3)(b) of regulation 2.E.7 (re-employed pensioners: adult survivor pensions in initial period), substitute—

“(b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under—

(i) Chapter 2.H,

(ii) regulation 2.D.14, and

(iii) regulation 2.K.12.”.

Amendment of regulation 2.E.10

39. In regulation 2.E.10 (amount of children’s pension under regulation 2.E.8: deceased active members and deceased non-contributing members), at the end of paragraph (4) insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 2.K.24.”.

Amendment of regulation 2.E.11

40.—(1) Regulation 2.E.11 (amount of children’s pension under regulation 2.E.8: deceased pensioner members) shall be amended as follows.

(2) At the end of paragraph (3), insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 2.K.24.”.

(3) For paragraph (8), substitute—

“(8) For the purposes of paragraphs (1) and (2), any reduction in the member’s pension under regulation 2.D.14 and regulation 2.K.12 will be ignored.”.

Amendment of regulation 2.E.12

41. In regulation 2.E.12 (amount of children’s pension under regulation 2.E.8: deceased deferred members), at the end of paragraph (3) insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 2.K.24.”.

Amendment of regulation 2.E.17

42.—(1) Regulation 2.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 2.D.5 employments)) shall be amended as follows.

(2) At the end of paragraph (1), insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 2.K.23.”.

(3) For paragraph (2)(b), substitute—

“(b) an amount equal to twice the member’s reckonable pay by reference to which the pension was calculated, less the aggregate of—

- (i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 2.D.14, and
- (ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 2.K.12.”.

(4) For paragraph (6), substitute—

“(6) The reference in paragraph (2)(a) to the annual rate of the member’s pension is to the member’s pension after it has been reduced to take account of—

- (a) the exercise by the member of an option under regulation 2.D.14, and
- (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 2.K.12.”.

Amendment of regulation 2.E.18

43.—(1) Regulation 2.E.18 (amount of lump sum: dual capacity members (disregarding regulation 2.D.5 employments)) shall be amended as follows.

(2) At the end of paragraph (2), insert (as full out words) “This is subject to paragraph (4).”.

(3) After paragraph (3), insert—

“(4) In the case of a 2008 Section Optant—

- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 2.K.12, and
- (b) the amount of the Optant’s reckonable pay for the purposes of paragraph (2)(b)(ii) shall be reduced by the aggregate of—
 - (i) the amount of the lump sum paid to the Optant under regulation 2.K.12, and
 - (ii) the lump sum under regulation 2.D.14 referred to in paragraph (2)(b)(ii).”.

Amendment of regulation 2.E.19

44.—(1) Regulation 2.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 2.D.5) shall be amended as follows.

(2) At the end of paragraph (2), insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 2.K.23.”.

(3) For paragraph (4), substitute—

“(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the reckonable pay by reference to which the pension to which the member became entitled on last exercising the option under regulation 2.D.5 was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulation 2.D.5 as a result of the member exercising the option under regulation 2.D.14, and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 2.K.12.”.

Amendment of regulation 2.E.21

45. After paragraph (12) of regulation 2.E.21 (payment of lump sums or pensions on death), insert—

“(13) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.20.”.

Amendment of regulation 2.F.6

46.—(1) Regulation 2.F.6 (calculating amounts of transfer value payments) shall be amended as follows.

(2) For paragraph (4), substitute—

“(4) In paragraph (3) “minimum transfer value” means—

(a) in the case of a person other than a 2008 Section Optant, the sum of—

(i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated, and

(ii) any contributions paid by the person under Chapter 2.C as a result of which the person is entitled to count such service;

(b) in the case of a 2008 Section Optant, the sum of—

(i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated,

(ii) any contributions paid by the person under Chapter 2.C as a result of which the person is entitled to count such service, and

(iii) the aggregate of any—

(aa) transfer value payments that have been made to the 1995 Section in respect of the Optant;

(bb) any contributions paid by the Optant under regulation D1 of the 1995 Regulations (contributions by members) in respect of pensionable employment in that Section on or before 31 March 2008, and

(cc) any payments made by the Optant under regulation Q1 of the 1995 Regulations (right to buy additional service) for the purchase of additional service,

which entitle the Optant to count, under Chapter 2.K, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.”.

(3) After paragraph (5), insert—

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

Amendment of regulation 2.F.8

47. After paragraph (4) of regulation 2.F.8 (right to apply for acceptance of transfer value payment from another scheme), insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.F.10

48. After paragraph (6) of regulation 2.F.10 (acceptance of transfer value payments), insert—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.F.11

49. After paragraph (6) of regulation 2.F.11 (calculation of transferred-in service), insert—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.F.12

50. After paragraph (4) of regulation 2.F.12 (meaning of “capped transferred-in service”), insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 2.K.13.”.

Amendment of regulation 2.J.9

51. In paragraph (5)(a) of regulation 2.J.9 (interest on late payment of benefits and refunds of contributions), after “Chapter 2.D” insert “or a lump sum under regulation 2.K.12”.

New Chapter 2.K

52. After Chapter 2.J (miscellaneous and supplementary provisions), insert—

“CHAPTER 2.K 2008 Section Optants

2.K.1 Application of Chapter 2.K

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

- (a) return to NHS employment in respect of which there is a liability to pay contributions to the Scheme in accordance with regulation D1 of the 1995 Regulations (contributions by members) within a period of less than 5 years beginning with the day on which they last left such employment (whether or not that period includes 1st October 2009);
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation B2(3) of the 1995 Regulations (restrictions on membership).

This Chapter does not apply to a person if—

- (i) that person is an active member of the 1995 Section by virtue of regulation E2(11) of the 1995 Regulations (early retirement pension (ill-health)), or
- (ii) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to

join the relevant corresponding 2008 scheme when offered the opportunity to do so.

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

2.K.2. Options for 1995 Section members to join this Section of the Scheme under Chapter 2.K

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

- (a) was an active member of the 1995 Section—
 - (i) on, or after, 1st October 2009, and
 - (ii) on the day that person’s option to join this Section of the Scheme was received by the Secretary of State, and
- (b) would be eligible to join this Section of the Scheme if that person met the condition in regulation 2.B.1(3)(a) (which requires that the person’s employment began on or after 1st April 2008),

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

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

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

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

This is subject to paragraphs (4) and (9) and regulation 2.K.19.

(4) For the purpose of paragraph (3)—

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

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

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

This is subject to paragraph (12).

(6) If contributions due from the member under Chapter 2.C in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member’s pensionable pay in such manner and at such rate as the Secretary of State requires.

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

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

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

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

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

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

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

(12) A person exercising an option under this regulation who is entitled to a pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) may count as qualifying service for the purpose of this Section of the Scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count under regulation C3 of the 1995 Regulations (meaning of qualifying service) in determining their entitlement to that pension.

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

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

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

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

Transfer of service from the 1995 Section

2.K.3 Service credited from the 1995 Section

(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the Scheme, and
- (b) is not entitled to a pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement),

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

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

(3) The period of pensionable service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count is a period equal in length to the period of pensionable

service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations (meaning of pensionable service).

This is subject to paragraph (6) and regulation 2.K.13.

(4) The period of pensionable service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count is a period equal in length to the pensionable service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations calculated by multiplying that period of service (specified in days) by the factor specified in paragraph (5) applicable to that case.

This is subject to paragraph (6) and regulation 2.K.13.

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

(6) For the purposes of paragraphs (3) and (4) the pensionable service which the 2008 Section Optant was entitled to count under regulation C2 of the 1995 Regulations—

- (a) shall not include any pensionable service the Optant was entitled to count under regulation C2(1)(e) of those Regulations,
- (b) shall be calculated without regard to paragraph (5) of regulation R3 of those Regulations (mental health officers), and
- (c) where the Optant is entitled to count any part-time pensionable service in the 1995 Section, shall be calculated in accordance with regulation R5 of those Regulations (part-time employment).

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

2.K.4 Treatment of Additional Pension

(1) This regulation applies to a 2008 Section Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension (“OPAP”) under regulation Q8 or Q10 or whose employing authority had done so under regulation Q11 of those Regulations (which deal with the purchase of additional pension by periodical contributions and lump sums).

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

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation Q14 of the 1995 Regulations (effect of payment of additional contributions under this Part),
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation Q13 of those Regulations (cancellation and cessation of options under regulation Q8).

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 2.C.14 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q14 of the 1995 Regulations where the person’s chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation Q14 of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Secretary of State shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

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

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 2.C.16 shall be equal to the amount of additional pension—

- (a) that was purchased in the 1995 Section under regulation Q13 of the 1995 Regulations, where the person’s chosen birthday under the OPAP was 65;

- (b) that would have been purchased in the 1995 Section under regulation Q13 of the 1995 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Secretary of State shall have regard to the advice of the Scheme actuary, where the person's chosen birthday under the OPAP was 60.

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

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the Scheme shall do so from the effective date specified in paragraph (5) of regulation 2.K.2.

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1), and
- (b) where at the effective date specified in paragraph (5) of regulation 2.K.2—
 - (i) that person—
 - (aa) was making additional contributions in accordance with an OPAP exercised under regulation Q8 of the 1995 Regulations; or
 - (bb) had applied to make, but had not yet begun making, additional contributions under regulation Q8 of the 1995 Regulations; or
 - (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation Q10 of the 1995 Regulations; or
 - (ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation Q11 of the 1995 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section of the Scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8, 2.C.10 or 2.C.11 would apply in that case.

(8) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 of the 1995 Regulations was 60, the OPAP referred to in that paragraph will apply in this Section of the Scheme—

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 2.C.8, 2.C.10 or 2.C.11 would apply in that case, and
- (b) after adjustment, having regard to the advice of the Scheme actuary, so that—
 - (i) the amount of the additional pension purchased in this Section of the Scheme is the same as that which would have been purchased in the 1995 Section, but
 - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the Scheme, reduce or (where appropriate) cease to be payable.

This is subject to paragraph (9).

(9) If paragraph (3)(b), (4)(b) or (8) of this regulation applies and—

- (a) the amount of the additional pension calculated in accordance with paragraph (3)(b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 2.C.8, 2.C.10 or 2.C.11, or
- (b) the limit on the total increase in the member's pension referred to in regulation 2.C.8 will be exceeded by the amount of additional pension that counts in this Section of the Scheme in accordance with paragraph (8)(b)(i) of this regulation notwithstanding any reduction in, or cessation of, additional contributions payable in accordance with paragraph (8)(b)(ii),

the total increase in the member's pension under this regulation, taken together with any other increase under regulations 2.C.8, 2.C.10 or 2.C.11—

- (i) will be subject to the limit on the total increase in the member's pension described in regulation 2.C.8, 2.C.10 or 2.C.11, and
- (ii) the amount of additional pension that counts in this Section of the Scheme in accordance with paragraphs (2) to (8) of this regulation that exceeds that limit will be converted to pensionable service for the purposes of regulation 2.A.2(1)(d), and in determining the amount of additional pension to be converted into pensionable service, the Secretary of State shall have regard to the advice of the Scheme actuary.

2.K.5 Treatment of Additional Service

(1) A 2008 Section Optant—

- (a) who becomes a member of this Section of the Scheme, and
- (b) is buying or has already bought a period of additional service that counts as pensionable service under regulation C2(1)(e) of the 1995 Regulations (meaning of pensionable service),

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

(2) The additional service referred to in paragraph (1) is—

- (a) any additional service bought under regulation Q1 of the 1995 Regulations (right to buy additional service) before the date that person's option to join this Section of the Scheme was received by the Secretary of State in accordance with regulation 2.K.2, and
- (b) any additional service bought under regulations 25 or 26 of the National Health Service (Superannuation) Regulations 1980^(a) (purchase of added years of contributing service, and additional payments to reckon certain periods of service as contributing service at actual length, respectively).

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

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

- (a) paragraph (4), and as the case may be paragraph (8), of regulation Q1 of the 1995 Regulations, in the case of an election that had ceased and was paid for in full by the date referred to in paragraph (2)(a);
- (b) paragraphs (1), (4) and (5) (but not (6)) of regulation Q7 of the 1995 Regulations (part payment for additional service or unreduced retirement sum), in the case of an election that had ceased but had only partially been paid for at that date, or
- (c) paragraphs (1), (4) and (5) (but not (6)) of regulation Q7 of the 1995 Regulations, in the case of an election that remained in force immediately before that date.

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

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

- (a) paragraph (3) or (4)(b) of regulation 25, or
- (b) paragraph (1) or (3)(b) of regulation 26,

of the National Health Service (Superannuation) Regulations 1980 applies to the Optant.

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

(a) S.I. 1980/632.

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

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

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

- (a) election to buy additional service will cease from that date, and
- (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member’s pensionable pay in accordance with regulation 2.K.2(6) and (7).

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

- (a) regulation 2.K.3(3), if the member is under age 60 on 1st October 2009, or
- (b) regulation 2.K.3(4), if the member is age 60 or over on that date.

This is subject to regulation 2.K.18.

2.K.6 Treatment of unreduced retirement lump sum

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person’s option to join this Section of the Scheme was received by the Secretary of State in accordance with regulation 2.K.2, had made an election under regulation Q2 of the 1995 Regulations (right to buy an unreduced lump sum) to—

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

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

(2) Those conditions are that the election—

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

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

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

2.K.7 Treatment of 2008 Section Optants to whom regulation L4(3) of the 1995 Regulations applied immediately before 1st April 2008

- (1) This regulation applies to a 2008 Section Optant—
- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 2.D and 2.E; and
 - (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation L4(3) of the 1995 Regulations (early leavers returning to pensionable employment).
- (2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—
- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to one or more periods of pensionable employment in the 1995 Section that occurred before a break of 12 months or more in such employment (“an earlier service credit”), and
 - (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to a period of pensionable employment in the 1995 Section that occurred after a break of 12 months or more in such employment.

This is subject to paragraph (3).

- (3) The Optant’s benefits in respect of an earlier service credit mentioned in paragraph (2)(a) shall be calculated—
- (a) separately, and
 - (b) by reference to the final year’s pensionable pay calculated in accordance with regulation C1 of the 1995 Regulations (meaning of pensionable pay and final year’s pensionable pay) in respect of that particular period.

This is subject to regulation 2.D.8(5)(b)(ii).

2.K.8 Pension debit members

- (1) This regulation applies where, on becoming a member of this Section of the Scheme, a 2008 Section Optant is a pension debit member.
- (2) The amount of the reduction to be made to the Optant’s pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant’s pension under the 1995 Section calculated in accordance with section 31 of the 1999 Act (reduction of benefit) adjusted by the factor referred to in paragraph (3).
- (3) The factor referred to in paragraph (2) is the factor specified by the Secretary of State for that purpose.
- (4) The Secretary of State may, after taking advice from the Scheme actuary, make such modifications to—
- (a) the Optant’s rights, and
 - (b) as to the form of the Optant’s benefits,
- as the Secretary of State considers necessary for the purpose specified in paragraph (5).
- (5) If in the opinion of the Secretary of State, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant’s rights are subject for some or all of the benefits under this Section of the Scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Secretary of State may modify those benefits as described in paragraph (4).

2.K.9 Treatment of 2008 Section Optants to whom regulation R9 of the 1995 Regulations applied immediately before 1st April 2008

- (1) This regulation applies to a 2008 Section Optant—
- (a) whose earnings in respect of pensionable employment in the 1995 Section were reduced;
 - (b) whose employer certified that the reduction in sub-paragraph (a) occurred in the circumstances described in paragraph (2) of regulation R9 of the 1995 Regulations (members whose earnings are reduced);
 - (c) who, subject to the agreement of the Secretary of State, would, on retirement or death, have become entitled to have a preserved pension calculated and paid as described in regulation L1 of the 1995 Regulations (preserved pension) in respect of pensionable service in the 1995 Section before the Optant's earnings were reduced; and
 - (d) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 2.D and 2.E.
- (2) For the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—
- (a) as a deferred member of this Section of the Scheme in respect of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to one or more periods of pensionable service in the 1995 Section before that Optant's earnings were reduced as described in paragraph (1) ("a protected service credit"), and
 - (b) as if the Optant became an active member for the first time on the first day of any period of pensionable service credited to that Optant under regulation 2.K.3 that relates to a period of pensionable service in the 1995 Section after that Optant's earnings were reduced as described in paragraph (1).

This is subject to paragraph (3).

- (3) The Optant's benefits in respect of a protected service credit mentioned in paragraph (2)(a) shall be calculated—
- (a) separately, and
 - (b) by reference to the final year's pensionable pay calculated in accordance with regulation C1 of the 1995 Regulations (meaning of pensionable pay and final year's pensionable pay) in respect of that particular period.

2.K.10 Restriction on pensionable pay used for calculating benefits in respect of capped Optant service

- (1) This regulation applies for determining the amount of an Optant's pensionable pay for the purposes of calculating so much of any benefit under this Section of the Scheme as falls to be calculated by reference to capped Optant service.
- (2) If an Optant's pensionable pay exceeds the permitted maximum, the excess is disregarded for the purposes of any such calculation as is mentioned in paragraph (1).
- (3) In this regulation "permitted maximum" means—
- (a) in relation to the tax year 2009-10, £123,600, and
 - (b) in relation to any later tax year, the figure found for that year under paragraphs (4) and (5).
- (4) If the retail prices index for the month of September preceding the tax year 2010-11 or any later tax year is higher than it was for the previous September, the figure for that year is an amount arrived at by—
- (a) increasing the figure for the previous tax year by the same percentage as the percentage increase in the retail prices index, and

- (b) if the result is not a multiple of £600, rounding it up to the nearest amount which is such a multiple.

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

(6) In this regulation—

- (a) “capped Optant service” has the meaning given by regulation 2.K.11; and
- (b) “pensionable pay” has the meaning given by regulation 2.A.8.

2.K.11 Meaning of “capped Optant service”

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

- (a) regulation 2.K.3, or
- (b) regulation 2.K.5,

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

(2) For the purposes of this Part, the same proportion of the total service that the member is entitled to count under regulations 2.K.3 and 2.K.5 as the capped service bears to the whole of the Optant’s service in the 1995 Section up to and including 31st March 2008 is capped Optant service.

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

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

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

2.K.12 Amount of pension and lump sum to be paid to a 2008 Section Optant

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

- (a) is entitled to an annual pension under Chapter 2.D, or
- (b) is entitled to the payment of a transfer value under Chapter 2.F in respect of the pension that has accrued to, or in respect of, that Optant under this Section of the Scheme.

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

- (a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation apply to that Optant, and
- (b) the annual amount of pension referred to in paragraph (1)(a) to which the Optant is entitled shall be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.

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

- (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5) of this regulation, and
- (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.

(4) Except in the case of an Optant to whom paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).

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

(5) The amount of the lump sum shall be determined by—

- (a) applying the formula—

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

and

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

(6) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 2.D.4, and

- (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (7).

(7) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—

- (a) applying the formula—

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

and

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

(8) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 2.D.5 for the first time, and

- (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of lump sum shall be determined as described in paragraph (9).

(9) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—

- (a) applying the formula—

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

and

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

(10) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 2.D.5 for the first time, and
- (b) has attained age 60 on the day of becoming entitled to that pension,

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

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

- (a) applying the formula—

$$\frac{3x(\textit{Specified Service} \times \textit{Reckonable Pay})}{(80 \times 365)}$$

and

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

(12) In the case of an Optant—

- (a) who is a pensioner member as respects a pension payable under regulation 2.D.5 as described in paragraph (9)(a) of that regulation, and
- (b) who—
 - (i) subsequently exercises an option under that regulation for the second or final time, or
 - (ii) becomes entitled to any other pension under Chapter 2.D in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

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

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

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

- (a) applying the formula—

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

and

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

(15) If any part of an Optant’s benefit under this Section of the Scheme falls to be calculated by reference to capped Optant service under regulation 2.K.10 the determinations in this regulation shall apply separately in respect of—

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

(16) For the purposes of this regulation—

“1995 Section Pension Debit” is the amount by which the Optant’s annual pension under the 1995 Regulations was to be reduced in accordance with section 31 of the 1999 Act;

“annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the Scheme apart from this

regulation, together with any increases payable under the Pensions (Increase) Act 1971(a), calculated as at the time payment would first be due;

“Increase Factor” is the factor that would have applied to the 1995 Section Pension Debit for the purposes of section 29 of the 1999 Act (creation of pension debits and credits) if the Optant had become entitled to a pension under the 1995 Regulations—

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

“Reckonable Pay” is the Optant’s reckonable pay calculated under Chapter 2.A;

“Reduction Factor” is the reduction factor that the Secretary of State, after taking advice from the Scheme actuary, determines would have applied to that Optant’s lump sum retiring allowance under regulation E6(7)(b) of the 1995 Regulations (lump sum on retirement) if that Optant had become entitled to a pension calculated under regulation E5 of those Regulations (early retirement pension (with actuarial reduction)) on the day he became entitled to a pension under regulation 2.D.4 or, as the case may be, regulation 2.D.5;

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

- (a) the period of pensionable service that the Optant is entitled to count under regulation 2.K.3, and
- (b) the period of pensionable service (if any) that the Optant is entitled to count under regulations 2.K.5 and 2.K.18;

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

“specified percentage” is the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 2.D.5(4)(a).

(17) In the case of a 2008 Section Optant whose benefits are subject to the modification provided in Part 4, this regulation is subject to regulation 3.K.11(16).

Miscellaneous provisions

2.K.13 Transfers in: transitional provision

- (1) This regulation applies to a 2008 Section Optant who—
 - (a) commenced a period of pensionable employment in the 1995 Section on, or after, 1st April 2008, and
 - (b) within one year of the commencement of that employment, makes an application to transfer accrued rights to benefits to the 1995 Section under regulation N1 of the 1995 Regulations (member’s right to transfer accrued rights to benefits to this Section of the Scheme).
- (2) If—
 - (a) the Secretary of State accepts the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation N1(4) of the 1995 Regulations, and
 - (b) that payment is received by the Secretary of State before the day on which the person’s option to join this Section of the Scheme is received,

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

(a) 1971 c.56.

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

- (a) the Secretary of State may accept that payment under this Section of the Scheme—
 - (i) without requiring the Optant to make an application under regulation 2.F.8, and
 - (ii) subject to such other conditions as the Secretary of State may require, and
- (b) if the Secretary of State accepts the payment, the period of pensionable service that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4).

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

- (a) will be calculated in accordance with regulation 2.F.11, and
- (b) the starting day for the purposes of regulation 2.F.11(2) and (3) will be the day that the Optant's pensionable employment referred to in paragraph (1) commenced.

This is subject to paragraph (5).

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

- (a) regulation 2.F.12 shall apply to the Optant in respect of the period of pensionable service that the Optant is entitled to count under this regulation, and
- (b) the reference in regulation 2.F.12(2) to the service that the member is entitled to count under regulation 2.F.10(2)(a) shall be read as a reference to the service the Optant is entitled to count under paragraph (4) of this regulation.

2.K.14 2008 Section Optants: Transitional Tier 2 ill-health pension

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

- (a) who has submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and
- (b) that form and supporting medical evidence was received by the Secretary of State before the date on which the Secretary of State received the Optant's option to join this Section of the Scheme.

(2) If the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 2.D.8(3) ("a tier 2 ill-health pension") within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received—

- (a) that Optant's service shall be increased by the enhancement period determined in accordance with paragraph (3) of this regulation ("the transitional enhancement period"), and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 2.D.8(6).

This is subject to paragraph (5).

(3) In this regulation—

- (a) "the transitional enhancement period" means two-thirds of the Optant's assumed pensionable service, and

- (b) “the Optant’s assumed pensionable service” means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching the age of 60.

This is subject to paragraph (4).

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

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

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

2.K.15 Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section of the Scheme

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

- (a) who submits a form AW33E (or such other form as the Secretary of State is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 2.D.8, and
- (b) that form and supporting medical evidence is received by the Secretary of State before the end of the period of one year commencing on the day on which the Secretary of State received the Optant’s option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(3) (“a tier 2 ill-health pension”)—

- (a) that Optant’s service shall be increased by the enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 2.K.14 apply to the Optant, and
- (b) the transitional enhancement period shall apply to that Optant’s service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant’s service under regulation 2.D.8(6).

This is subject to paragraph (3).

(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

2.K.16 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

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

- (a) who submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and
- (b) that form and supporting medical evidence was received by the Secretary of State before the date on which the Secretary of State received the Optant’s option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 2.D.8(2) (“a tier 1 ill-health pension”)—

- (a) within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received, and
- (b) immediately before joining this Section of the Scheme the Optant was notified under regulation E2B of the 1995 Regulations (re-assessment of ill-health condition determined under regulation E2A) that the Optant may ask the Secretary of State to consider whether that Optant subsequently meets the tier 2 condition under that regulation,

that Optant shall be entitled to a re-assessment of entitlement to an ill-health pension determined under regulation 2.D.9 in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 2.D.8(3)(a) at the date of the Secretary of State's review, "permanently" shall mean until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9, the Secretary of State determines that the Optant meets the condition in regulation 2.D.8(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 2.D.8 but which shall be calculated in accordance with paragraph (5) of this regulation.

(5) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (4)—

- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 2.K.14 apply to that Optant, and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 2.D.8(6).

This is subject to paragraph (6).

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

- (a) regulation 2.K.14 shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Secretary of State's determination under regulation 2.D.9" after "continued in service", and
- (b) references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

2.K.17 Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

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

- (a) who submits a form AW33E (or such other form as the Secretary of State is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 2.D.8,
- (b) that form and supporting medical evidence was received by the Secretary of State before the end of the period of one year commencing on the day the Secretary of State received the Optant's option to join this Section of the Scheme, and
- (c) following a consideration of the form and medical evidence referred to in sub-paragraph (a)—

- (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 2.D.8, and
- (ii) at the time the Optant is awarded a pension under that regulation the Secretary of State gives the Optant notice in writing in accordance with regulation 2.D.9(1)(b) that the Optant's case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 2.D.8(3)(a) at the date of such a consideration.

(2) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9, the Secretary of State determines that the Optant meets the condition in regulation 2.D.8(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 2.D.8 but which shall be calculated in accordance with paragraph (3) of this regulation.

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

- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 2.K.14 apply to that Optant, and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 2.D.8(6).

This is subject to paragraph (4).

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

- (a) regulation 2.K.14 shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Secretary of State's determination under regulation 2.D.9" after "continued in service", and
- (b) references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

2.K.18 Transitional provision: Treatment of additional service in respect of Optants retiring on the grounds of ill-health

(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 2.K.5.

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E2A of the 1995 Regulations (ill-health pension on early retirement);
- (b) that form and supporting medical evidence was received by the Secretary of State before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q6 of the 1995 Regulations (paying for additional service and unreduced retirement lump sum by regular additional contributions); and
- (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 2.D.8 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

that Optant will not be entitled to count a period of pensionable service under regulation 2.K.5 and—

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect that period of additional service shall be returned to the Optant in accordance with regulation Q7(2) of the 1995 Regulations (part payment for additional service or unreduced retirement sum); and
- (ii) paragraph (7) of regulation 2.K.5 will not apply.

(3) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E2A of the 1995 Regulations;
- (b) that form and supporting medical evidence was received by the Secretary of State after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q6 of the 1995 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 2.D.8 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 2.K.5, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4) of this regulation.

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

- (a) the period of service the Optant is entitled to count under regulation 2.K.5, and
- (b) the period of service the Optant elected to purchase under regulation Q1 of the 1995 Regulations calculated in accordance with regulation Q7(3) of the 1995 Regulations and as if the member had become entitled to a pension under regulation E2A of those Regulations on the day the Secretary of State received that Optant's option to join this Section of the Scheme.

(5) For the purposes of calculating the Optant's benefits under this Section of the Scheme, the pensionable service the Optant is entitled to count under paragraph (4) of this regulation will be added to the service the member is entitled to count under regulation 2.K.3(3).

2.K.19 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 2.K.2

(1) This regulation applies to a person who—

- (a) on, or after, 1st October 2009—
 - (i) is an active member of the 1995 Section, or
 - (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation P1 of the 1995 Regulations (absence because of illness or injury or certain types of leave),
- (b) has submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and
- (c) that form and supporting medical evidence was received by the Secretary of State—

- (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 2.K.2; or
 - (ii) if such a statement has been issued to that person, before the date specified by the Secretary of State for the purposes of paragraph (3) of that regulation.
- (2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).
- (3) The option under paragraph (2) may only be exercised if—
- (a) the person gives in writing to the Scheme administrator in such form as the Secretary of State requires, and
 - (b) that notice is received by the Scheme administrator within a period of four months starting with, where—
 - (i) that person is sent a written notification of the Secretary of State’s decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation E2A of the 1995 Regulations (“the first decision”), the date of that decision;
 - (ii) that person is sent a written notification of the Secretary of State’s decision in respect of the stage one dispute (“a stage one decision”), the date of that decision;
 - (iii) that person is sent a written notification of the Secretary of State’s decision in respect of the stage two dispute (“a stage two decision”), the date of that decision; or
 - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

- (4) Paragraph (3) shall cease to apply to any person if at any time that person—
- (a) returns to NHS employment, or
 - (b) claims a pension under regulation E5 or L1 of the 1995 Regulations (early retirement pension (with actuarial reduction) and preserved pension, respectively).
- (5) For the purpose of this regulation—

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

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

“the final determination by the Pensions Ombudsman” means a written determination under section 151 of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage two decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage two decision.

2.K.20 Nominations and notices accepted by the Secretary of State under the 1995 Regulations to apply under Chapter 2.E of these Regulations

- (1) This regulation applies if—

- (a) the Secretary of State has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 Section member, and
 - (b) on the day that the Secretary of State receives that person's option to join this Section of the Scheme, that person has not revoked that nomination or notice.
- (2) The nominations and notices referred to in paragraph (1) are—
- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
 - (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person's surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations;
 - (c) a notice provided for the purpose of regulation G14 of the 1995 Regulations (surviving nominated partner's pension) nominating a partner to receive a surviving nominated partner pension.
- (3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1) shall be treated—
- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Secretary of State as a notice for the purposes of regulation 2.E.21,
 - (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Secretary of State as a notice for the purposes of regulation 2.E.21 specifying that the Optant's personal representatives are to receive any lump sum or pension on the death of the Optant, and
 - (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Secretary of State as a declaration for the purposes of regulation 2.E.2.

2.K.21 Late payment of pension with actuarial increase for a 2008 Section Optant

(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 2.D.1 after reaching the age of 65.

(2) In the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—

- (a) the pensionable service that Optant is entitled to count under—
 - (i) regulation 2.K.3,
 - (ii) regulation 2.K.5 (if any), and
 - (iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65, and
- (b) any contributions paid under regulations 2.C.8, 2.C.10 or 2.C.11 before reaching that age,

shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

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

- (a) before that pension had been reduced in accordance with regulation 2.K.12, and
- (b) before any commutation under regulation 2.D.14.

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

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

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

(6) The increase shall apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 2.D.3.

2.K.22 2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations

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

- (a) is entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”), and
- (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 2.D.8 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

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

(3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 2.D.8, to—

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

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

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

- (a) the member's tier 1 ill-health pension under regulation E2A of the 1995 Regulations in respect of the member's earlier 1995 Section service, and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member's later 2008 Section service.

This is subject to paragraph (5) and regulations 2.K.14 to 2.K.18.

(5) If the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service,
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition determined under regulation E2A), and
- (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the later 2008 Section service on the termination of that later service,

the Optant is entitled to the benefits set out in paragraph (6).

(6) Those benefits are—

- (a) a tier 2 ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service, and
- (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

2.K.23 Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations

(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—

- (a) is entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section, and
- (b) is an active or a non-contributing member in respect of service in this Section of the Scheme (“the later 2008 Section service”).

(2) The lump sum payable on the death of an Optant referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant, and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 2.E.17.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 2.D.8(5), if the deceased Optant had not reached the age of 65, or
- (b) payable under regulation 2.D.1, if the deceased Optant had reached the age of 65,

to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 2.D.8(5), if the deceased Optant had not reached the age of 65, or
- (b) payable under regulation 2.D.1, if the deceased Optant had reached the age of 65,

to which the Optant would have been entitled on the last day of the Optant's pensionable service.

(5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 2.D.5, the lump sum referred to in paragraph (2)(a) shall be determined by the Secretary of State after taking advice from the Scheme actuary.

2.K.24 Children's pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations

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

- (a) at the date of the Optant's death—
 - (i) an active member,
 - (ii) a non-contributing member,
 - (iii) a pensioner member, or
 - (iv) a deferred member, and
- (b) on that date was entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”).

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), “relevant service” for the purposes of paragraph (3) of regulation 2.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) “Relevant service” means—

- (a) in the case of a deceased Optant who was, at the date of the Optant’s death, an active member the greater of—
 - (i) the pensionable service the deceased Optant was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(5) if the deceased Optant had become entitled to a tier 2 ill-health pension at that date, and
 - (ii) the deceased Optant’s later 2008 Section service as an active member plus the difference between—
 - (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service as an active member, and
 - (bb) 10 years pensionable service,where the amount of service in (aa) is less than that specified in (bb);
- (b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the Scheme of the Scheme on the date of that Optant’s death.

(4) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of paragraph (3) of regulation 2.E.11 shall have the meaning given in paragraph (5) of this regulation.

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

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

(6) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of paragraph (3) of regulation 2.E.12 shall have the meaning given in paragraph (7) of this regulation.

(7) The “basic death pension” means—

- (a) if the deceased Optant died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 2.E.10 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension), and
- (b) if the deceased Optant died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
 - (i) 75% of the pension to which the deceased Optant would have been entitled if the deceased Optant had become entitled to a pension under regulation 2.D.1 on the date of death (disregarding any additional pension), and
 - (ii) 75% of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service that has been deferred plus the difference between—
 - (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service that has been deferred, and

- (bb) 10 years pensionable service,
where the amount of service in (aa) is less than that specified in (bb).”.

Amendment of regulation 3.A.1

53.—(1) Regulation 3.A.1 (interpretation of Part 3: general) shall be amended as follows.

(2) At the appropriate place in the alphabetical order, insert—

““2008 Section Optant” has the meaning given in regulation 3.K.1;

“the 1995 Section” means the section of the National Health Service Pension Scheme for England and Wales set out in the National Health Service Pension Scheme Regulations 1995;

“capped increase to pensionable earnings” must be read in accordance with regulation 3.F.12;

“electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000(a);

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

(3) Omit the definitions of “capped transferred-in service” and the “NHS Pension Scheme 1995”.

(4) For the definition of—

(a) “the Scheme”, substitute ““the Scheme” means the National Health Service Pension Scheme for England and Wales;”;

(b) “host Trust or Board” substitute—

““host Trust or Board”—

(a) in respect of a person who is a registered medical practitioner or non-GP provider who is—

(i) a partner in a partnership that is a GMS practice;

(ii) a partner in a partnership that has entered into a PMS agreement;

(iii) a partner in a partnership that is an APMS contractor that has entered into an APMS contract for the provision of primary medical services;

(iv) a shareholder in a company limited by shares that is a GMS practice or a PMS practice or an APMS contractor that has entered into a PMS agreement or APMS contract for the provision of primary medical services; or

(v) an individual who is a GMS practice, PMS practice or an APMS contractor,

means each Primary Care Trust or Local Health Board with which that partnership (in the case of (i) to (iii)), company (in the case of (iv)) or practice or contractor (in the case of (v)) has entered into an agreement or contract referred to in those provisions and (in the case of a registered medical practitioner) the relevant Trust or Board on whose medical performers’ list that practitioner’s name appears, and such a person shall be deemed to be employed by the appropriate Trust or Board for the purposes of this Part, except for where regulation 3.C.5(5) or (6) applies;

(b) in respect of a dentist performer, means each Primary Care Trust or Local Health Board for whom the dentist performer performs primary dental services under—

(i) a GDS contract;

(a) 2000 (c.7).

- (ii) a PDS agreement (whether or not a PDS contractor is a party to that agreement); or
 - (iii) a contract for services with a Primary Care Trust or a Local Health Board which relates to arrangements under which it provides primary dental services under section 99(2) of the 2006 Act (in the case of England) or section 56(2) of the 2006 (Wales) Act (primary dental services) (in the case of Wales), or
- and, where appropriate, on whose dental performers list the dentist performer's name appears, and such a person shall be deemed to be employed by the appropriate Trust or Board for the purposes of this Part;”.

Amendment of regulation 3.A.3

54. In paragraph (1) of regulation 3.A.3 (meaning of “pensionable service”), after sub-paragraph (c) insert—

- “; and
- (d) any period of pensionable service the member is entitled to count under Chapter 3.K.”.

Amendment of regulation 3.A.5

55. In paragraph (1) of regulation 3.A.5 (meaning of “qualifying service”)—

- (a) at the end of sub-paragraph (c), omit “, and”;
- (b) after sub-paragraph (e), insert—
 - “; and
 - (f) in the case of a 2008 Section Optant, any period of qualifying service the member is entitled to count under Chapter 3.K.”.

Amendment of regulation 3.A.7

56. After paragraph (9) of regulation 3.A.7 (meaning of “pensionable earnings”), insert—

“(10) The pensionable earnings of a type 1 practitioner include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 3.K.”.

Omission of regulation 3.A.11

57. Omit regulation 3.A.11 (restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service).

Amendment of regulation 3.A.13

58. After paragraph (4) of regulation 3.A.13 (meaning of pensionable earnings in relation to other practitioners), insert—

“(5) The pensionable earnings of a type 2 practitioner or a locum practitioner include the amount of any pensionable earnings the practitioner is entitled to count under Chapter 3.K.”

Amendment of regulation 3.B.1

59.—(1) Regulation 3.B.1 (eligibility: general) shall be amended as follows.

(2) In paragraph (3)—

- (a) in sub-paragraph (a), omit “and meets any one of the other Scheme conditions (see paragraph (5))”;

- (b) after sub-paragraph (b), insert (as full out words) “and meets any one of the other Scheme conditions (see paragraph (5)).”.

New regulation 3.B.1A

60. After regulation 3.B.1 (eligibility: general), insert—

“3.B.1A Eligibility: transitional

- (1) A person is eligible to be an active member of this Section of the Scheme if—
- (a) the Secretary of State has accepted that person’s option to join this Section of the Scheme under Chapter 3.K, and
 - (b) that person is not prevented by regulation 3.B.2 or 3.B.6 from doing so.
- (2) If a person referred to in paragraph (1)—
- (a) is entitled to a tier 1 ill-health pension under regulation E2A(3)(a) of the 1995 Regulations (ill-health pension on early retirement), and
 - (b) as the result of a determination made by the Secretary of State under regulation E2B(3) of those Regulations, that person becomes entitled to a tier 2 ill-health pension in place of that tier 1 ill-health pension,

that person shall cease to be eligible to be an active member of this Section of the Scheme from the date the Secretary of State makes that determination.”.

Amendment of regulation 3.C.6

61. After paragraph (8) of regulation 3.C.6 (member’s option to pay additional periodical contributions to purchase additional pension), insert—

“(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.8

62. After paragraph (6) of regulation 3.C.8 (member’s option to pay lump sum contribution to purchase additional pension), insert—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.9

63. After paragraph (5) of regulation 3.C.9 (payment of additional lump sum contributions by employing authority), insert—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.12

64.—(1) Regulation 3.C.12 (effect of payment of additional contributions under this Chapter) shall be amended as follows.

- (2) In paragraph (3), after—
- (a) “Chapter 3.D” insert “or Chapter 3.K”;
 - (b) “3.D.5” insert “and 3.K.17”.

(3) After paragraph (10), insert—

“(11) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.14

65. After paragraph (5) of regulation 3.C.14 (effect of part payment of periodical contributions), insert—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.4.”.

Amendment of regulation 3.C.15

66. In paragraph (2) of regulation 3.C.15 (revaluation of increases bought under options: members’ pensions), for “3.C.14 to 3.C.16” substitute “3.C.12 to 3.C.14”.

Amendment of regulation 3.D.1

67. After paragraph (7) of regulation 3.D.1 (normal retirement pensions), insert—

“(8) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.3

68. After paragraph (4) of regulation 3.D.3 (late payment of pension with actuarial increase), insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.17.”.

Amendment of regulation 3.D.4

69. After paragraph (4) of regulation 3.D.4 (early payment of pensions with actuarial reduction), insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.5

70. After paragraph (8) of regulation 3.D.5 (partial retirement: members aged at least 55), insert—

“(9) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.7

71.—(1) Regulation 3.D.7 (early retirement on ill-health (active members and non-contributing members)) shall be amended as follows.

(2) For paragraph (5)(b), substitute—

“(b) is not increased by the enhancement period in the circumstances referred to in (a) if—

- (i) the member’s pensionable service before and after the break is treated separately under regulation 3.G.2; or
- (ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 3.K.7.”.

(3) In paragraph (17) for the definition of “permanently”, substitute—

““permanently” means—

- (a) the period until age 65, and
- (b) in the case of a 2008 Section Optant who, before joining this Section of the Scheme, was assessed by a medical adviser as being—
 - (i) permanently incapable of efficiently discharging their duties for the purposes of regulation E2A(2)(b)(i) of the 1995 Regulations (ill-health pension on early retirement), that Optant shall be deemed to be permanently incapable of

discharging the duties of the Optant's employment efficiently for the purposes of paragraph (2)(a) of this regulation;

- (ii) permanently incapable of regular employment of like duration for the purposes of regulation E2A(2)(b)(ii) of the 1995 Regulations, that Optant shall be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a) of this regulation;”.

(4) After paragraph (17), insert—

“(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 3.K.11, 3.K.13 to 3.K.16 and 3.K.18.”.

Amendment of regulation 3.D.8

72.—(1) Regulation 3.D.8 (re-assessment of entitlement to an ill-health pension determined under regulation 3.D.7) shall be amended as follows.

(2) For paragraph (2), substitute—

“(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Secretary of State for a review of whether the member subsequently meets the condition in regulation 3.D.7(3)(a) if—

- (a) the member makes the application in writing—
 - (i) within three years of the date of issue of the notice, or
 - (ii) in the case of a member who engages in further NHS employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
 - (i) relating to whether the condition in regulation 3.D.7(3)(a) is satisfied at the date of the Secretary of State's review; and
 - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 3.D.7(2)(a);
- (c) no previous application for a review has been made under this paragraph, and
- (d) the member has not become entitled to a tier 2 ill-health pension in respect of any later service under regulation 3.G.5.”.

(3) After paragraph (3), insert—

“(4) In the case of a 2008 Section Optant, this regulation is subject to regulations 3.K.15 and 3.K.16.”.

Amendment of regulation 3.D.9

73. After paragraph (9) of regulation 3.D.9 (early retirement on ill-health (deferred members)), insert—

“(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.D.10

74. After paragraph (9) of regulation 3.D.10 (general option to exchange part of pension for lump sum), insert—

“(10) In the case of a 2008 Section Optant, this regulation is subject to paragraph (4) of regulation 3.K.8 and regulation 3.K.11.”.

Amendment of regulation 3.D.12

75. For regulation 3.D.12 (reduction in pension debit member's benefits), substitute—

“3.D.12 Reduction in pension debit member's benefits

(1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage).

(2) In the case of a 2008 Section Optant, this regulation is subject to paragraph (2) of regulation 3.K.8.”.

Amendment of regulation 3.E.2

76. After paragraph (2) of regulation 3.E.2 (meaning of “surviving nominated partner”), insert—

“(3) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.12.”.

Amendment of regulation 3.E.3

77.—(1) Regulation 3.E.3 (amount of pensions under regulation 3.E.1: active and non-contributing members) shall be amended as follows.

(2) At the end of paragraph (2), insert (as full out words) “Sub-paragraph (b) is subject to paragraph (7).”.

(3) At the end of paragraph (3), insert (as full out words) “This is subject to paragraph (7).”.

(4) After paragraph (6), insert—

“(7) For the purposes of paragraphs (2)(b) and (3) any increase under—

(a) regulation 3.D.3, or

(b) regulation 3.K.17,

is ignored.”.

Amendment of regulation 3.E.4

78.—(1) Regulation 3.E.4 (amount of pensions under regulation 3.E.1: pensioner members) shall be amended as follows.

(2) For paragraph (3), substitute—

“(3) For the purpose of paragraph (1) any reduction in the rate of the member's pension under—

(a) Chapter 3.H,

(b) regulation 3.D.10, or

(c) regulation 3.K.11,

is ignored.

(3A) For the purpose of paragraph (2)—

(a) any reduction in the rate of the member's pension under—

(i) regulation 3.D.4,

(ii) regulation 3.D.10, or

(iii) regulation 3.K.11; and

(b) any increase in the rate of the member's pension under—

(i) regulation 3.D.3, or

(ii) regulation 3.K.17,

is ignored.”.

(3) Omit paragraph (8).

Amendment of regulation 3.E.7

79. For paragraph (3)(b) of regulation 3.E.7 (re-employed pensioners: adult survivor pensions in initial period), substitute—

“(b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under—

- (i) Chapter 3.H,
- (ii) regulation 3.D.10, and
- (iii) regulation 3.K.11.”.

Amendment of regulation 3.E.10

80. In regulation 3.E.10 (amount of children’s pension under regulation 3.E.8: deceased active members and deceased non-contributing members), at the end of paragraph (3) insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 3.K.23.”.

Amendment of regulation 3.E.11

81.—(1) Regulation 3.E.11 (amount of children’s pension under regulation 3.E.8: deceased pensioner members) shall be amended as follows.

(2) At the end of paragraph (3), insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 3.K.23.”.

(3) For paragraph (8), substitute—

“(8) For the purposes of paragraphs (3), (5) and (6), any reduction in the member’s pension under regulation 3.D.10 and regulation 3.K.11 will be ignored.”.

Amendment of regulation 3.E.12

82. In regulation 3.E.12 (amount of children’s pension under regulation 3.E.8: deceased deferred members), at the end of paragraph (3) insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 3.K.23.”.

Amendment of regulation 3.E.17

83.—(1) Regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers (disregarding regulation 3.D.5 employments)) shall be amended as follows.

(2) At the end of paragraph (1), insert (as full out words) “In the case of a 2008 Section Optant, this is subject to regulation 3.K.22.”.

(3) For paragraph (2)(b), substitute—

“(b) an amount equal to twice the annual average of the member’s uprated earnings by reference to which the pension was calculated, less the aggregate of—

- (i) any lump sum paid to the member when the pension came into payment as a result of the member exercising the option under regulation 3.D.10, and
- (ii) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 3.K.11.”.

(4) For paragraph (6), substitute—

“(6) The reference in paragraph (2)(a) to the annual rate of the member’s pension is to the member’s pension after it has been reduced to take account of—

- (a) the exercise by the member of any option under regulation 3.D.10, and

- (b) in the case of a 2008 Section Optant, the lump sum paid to the Optant under regulation 3.K.11.”.

Amendment of regulation 3.E.18

84.—(1) Regulation 3.E.18 (amount of lump sum: dual capacity members (disregarding regulation 3.D.5 employments)) shall be amended as follows.

(2) At the end of paragraph (2), insert (as full out words) “This is subject to paragraph (4).”.

(3) After paragraph (3), insert—

“(4) In the case of a 2008 Section Optant—

- (a) the reference to the annual rate of pension in paragraph (2)(b)(i) is to the annual rate of pension after it has been reduced to take account of the lump sum paid to the Optant under regulation 3.K.11, and
- (b) the amount of the Optant’s uprated earnings for the purposes of paragraph (2)(b)(ii) shall be reduced by the aggregate of—
 - (i) the amount of the lump sum paid to the Optant under regulation 3.K.11, and
 - (ii) any lump sum under regulation 3.D.10 referred to in paragraph (2)(b)(ii).”.

Amendment of regulation 3.E.19

85.—(1) Regulation 3.E.19 (amount of lump sum: dual capacity members: members with pensions under regulation 3.D.5) shall be amended as follows.

(2) After paragraph (2)(a), insert—

“(b) if the member had been entitled to any pensions under regulation 3.D.5 for less than 5 years, the lesser of—

- (i) the total of the guarantee amounts for each of those pensions (see paragraph (3)), and
- (ii) the aggregate lump sum cap (see paragraph (4));

(c) in the case of a 2008 Section Optant, this is subject to paragraph (4) and regulation 3.K.22.”.

(3) For paragraph (4), substitute—

“(4) The aggregate lump sum cap is equal to twice the appropriate fraction of the annual average of the member’s uprated earnings by reference to which the pension to which the member became entitled on last exercising the option under regulation 3.D.5 was calculated, less the total of any lump sums paid to the member—

- (a) in exchange for pensions under regulation 3.D.5 as a result of the member exercising the option under regulation 3.D.10, and
- (b) in the case of a 2008 Section Optant the lump sum paid to that Optant under regulation 3.K.11.”.

Amendment of regulation 3.E.21

86. After paragraph (12) of regulation 3.E.21 (payment of lump sums or pensions on death), insert—

“(13) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.12.”.

Amendment of regulation 3.F.6

87.—(1) Regulation 3.F.6 (calculating amounts of transfer value payments) shall be amended as follows.

(2) For paragraph (4), substitute—

“(4) In paragraph (3), “minimum transfer value” means—

- (a) in the case of a person other than a 2008 Section Optant, the sum of—
 - (i) any transfer value payments that have been made to this Section of the Scheme in respect of the person as a result of which the person is entitled to count any pensionable service under this Section of the Scheme by reference to which the accrued rights subject to the transfer are calculated, and
 - (ii) any contributions paid by the person under Chapter 3.C as a result of which the person is entitled to count such service;
- (b) in the case of a 2008 Section Optant, the sum of—
 - (i) any transfer value payments that have been made to the 1995 Section in respect of the Optant;
 - (ii) any contributions paid by the Optant under regulation D1 as modified by paragraph 10 of Schedule 2 to the 1995 Section (contributions by members) in respect of pensionable employment in that Section on or before 31st March 2008, and
 - (iii) any payments made by the Optant under regulation Q1 as modified by paragraph 20 of Schedule 2 to of the 1995 Regulations (right to buy additional service) for the purchase of additional service,which entitle the Optant to count, under Chapter 3.K, any pensionable service by reference to which the accrued rights subject to the transfer are calculated.”.

(3) At the end of paragraph (5)(b), insert—

“; and

- (c) separately in respect of—
 - (i) the aggregate of any amounts of pensionable earnings that the member is entitled to count for the purpose of calculating benefits payable to, or in respect of, the member that fall to be treated as—
 - (aa) a capped increase to pensionable earnings in accordance with regulation 3.F.12, or
 - (bb) an amount of capped Optant pensionable earnings in accordance with regulation 3.K.9, and
 - (ii) any amount of pensionable earnings that do not fall to be so treated.”.

(4) After paragraph (5), insert—

“(6) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.11.”.

Amendment of regulation 3.F.8

88. After paragraph (4) of regulation 3.F.8 (right to apply for acceptance of transfer value payment from another scheme), insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.F.9

89.—(1) Regulation 3.F.9 (procedure for applications under regulation 3.F.8) shall be amended as follows.

(2) In paragraph (1)(d), in—

- (a) paragraph (i), after “of the” insert “increase to pensionable earnings and the”,
- (b) paragraph (ii), after “of the” insert “increase to pensionable earnings and the”;

(3) In paragraph (2)(a), for “3.A.13 (restriction on pensionable earnings used for calculating benefits in respect of capped transferred-in service)” substitute “3.F.12”.

(4) For paragraph (3), substitute—

“(3) A statement given to the member of a corresponding 1995 scheme in pursuance of such a request as is mentioned in paragraph (1)(d) must inform the member of the amount of—

- (a) the increase to pensionable earnings that will count under this Section of the Scheme for the purposes of calculating benefits payable to or in respect of the member, and
- (b) the amount of pensionable service that will count for the purposes of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.”.

Amendment of regulation 3.F.10

90. For regulation 3.F.10 (acceptance of transfer value payments), substitute—

“3.F.10 Acceptance of transfer value payments

(1) If an application is duly made by a member under regulation 3.F.8, the Secretary of State may accept the transfer value payment if such conditions as the Secretary of State may require are met.

This is subject to paragraph (10).

(2) If the Secretary of State accepts the payment, the member is entitled to count—

- (a) the appropriate increase in the member’s pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the member under the Scheme, and
- (b) the relevant period of pensionable service for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3.

This is subject to paragraph (8).

(3) In paragraph (2)(a) “the appropriate increase” means the increase calculated in accordance with regulation 3.F.11.

(4) In paragraph (2)(b) “the relevant period” means the period calculated by reference to whichever of paragraphs (5), (6) or (7) apply in respect of the transfer payment.

(5) If the Secretary of State accepts the payment in respect of a member of a corresponding 1995 scheme, “the relevant period” means the period calculated in accordance with any guidance, tables and other relevant factors provided by the Scheme actuary for that purpose, having regard to the period of employment that qualified the member for the rights in the corresponding 1995 scheme.

(6) If the Secretary of State accepts the payment under the public sector transfer arrangements, “the relevant period” means the period of pensionable service the member is entitled to count calculated—

- (a) in accordance with those arrangements, and
- (b) by reference to the guidance and tables provided by the Scheme actuary for the purposes of this paragraph, that are in use on the date that is used by the transferring scheme for calculating the transfer value payment.

(7) If the Secretary of State accepts the payment from a scheme that does not participate in the public sector transfer arrangements, “the relevant period” means a period equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made.

(8) Any part of a member’s increase to pensionable earnings under paragraph (2)(a) that falls to be treated as a capped increase to pensionable earnings shall count as a capped increase to pensionable earnings for the purpose of paragraph (5) of regulation 3.F.6.

(9) For the meaning of “capped increase to pensionable earnings”, see regulation 3.F.12.

- (10) The Secretary of State may not accept a transfer value payment if—
- (a) it would be applied in whole or in part in respect of the member’s or the member’s spouse’s entitlement to a guaranteed minimum pension, and
 - (b) it is less than the amount required for that purpose, as calculated in accordance with guidance and tables prepared by the Scheme actuary for the purposes of this paragraph.

This is subject to paragraph (11).

(11) Paragraph (10) does not apply if the transfer would be paid under the public sector transfer arrangements.

(12) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.F.11

91.—(1) Regulation 3.F.11 (calculation of transferred-in pensionable service) shall be amended as follows.

(2) In the heading, for “Calculation of transferred-in pensionable service” substitute **“Calculation of increase to pensionable earnings as the result of a transfer-in”**.

(3) For paragraph (2), substitute—

“(2) Subject to paragraph (4), for the purposes of the calculation under paragraph (1), the benefits in respect of the transfer payment will be calculated by increasing the member’s pensionable earnings for—

- (a) the financial year in which the member joined this Section of the Scheme; or
- (b) the financial year in which the transfer payment is received if the payment is received more than 12 months after the day on which the member joined this Section of Scheme (“the starting day”).”

(4) In paragraph (3)(b), after “payments)” insert “equal to the amount of the transfer payment”.

(5) After paragraph (6), insert—

“(7) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.F.12

92.—(1) Regulation 3.F.12 (meaning of “capped transferred-in service”) shall be amended as follows.

(2) In the heading, for “meaning of “Capped transferred-in service”” substitute **“meaning of “Capped increase to pensionable earnings””**.

(3) For paragraph (2), substitute—

“(2) For the purposes of this Part—

- (a) any part of the increase to pensionable earnings that the member is entitled to count under regulation 3.F.10(2)(a), and
- (b) which is the result of capped service in employment to which the transferring scheme applied,

is a capped increase to pensionable earnings.”.

(4) After paragraph (4), insert—

“(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.”.

Amendment of regulation 3.J.9

93. In paragraph (5)(a) of regulation 3.J.9 (interest on late payment of benefits and refunds of contributions), after “Chapter 3.D” insert “or a lump sum under regulation 3.K.11”.

Insertion of Chapter 3.K

94. After Chapter 3.J (miscellaneous and supplementary provisions), insert—

“CHAPTER 3.K

2008 Section Optants

3.K.1 Application of Chapter 3.K

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

- (a) return to NHS practitioner service in respect of which there is a liability to pay contributions to the Scheme in accordance with regulation D1 of the 1995 Regulations (as modified by paragraph 10 of Schedule 2 to those Regulations) (contributions by members) within a period of less than 5 years beginning with the day on which they last left such service (whether or not that period includes 1st October 2009), and
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation B2(3) of the 1995 Regulations (restrictions on membership).

This Chapter does not apply to a person if—

- (i) that person is an active member of the 1995 Section by virtue of regulation E2(11) of the 1995 Regulations (early retirement pension (ill-health)), or
- (ii) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

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

3.K.2. Options for 1995 Section members to join this Section of the Scheme under Chapter 3.K

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

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

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

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

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

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

This is subject to paragraphs (4) and (9) and regulation 3.K.20.

- (4) For the purpose of paragraph (3)—
- (a) the date specified by the Secretary of State in the comparative statement shall be a date that is at least four months later than the comparative statement issue date, and
 - (b) the notice shall be—
 - (i) irrevocable, and
 - (ii) treated as having been given on the date on which it is received by the Scheme administrator.
- (5) The option shall be effective from the first day of the member's pensionable service in the 1995 Section falling on or after 1st April 2008, and—
- (a) the person shall be treated as if that person had been a member of this Section of the Scheme from that date,
 - (b) the member's service and pensionable earnings both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section shall count under this Section of the Scheme only to the extent that it would have counted had the member been an active member of this Section of the Scheme from that date.

This is subject to paragraph (12).

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

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

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

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

- (a) a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme was issued to the person whilst that person was an active member of the 1995 Section,
- (b) but for the exercise of the option the person would otherwise become entitled to the immediate payment of benefits under Part E of the 1995 Section (as modified by paragraphs 11 and 12 of Schedule 2 to the 1995 Regulations),
- (c) the person has provided the Secretary of State with a notice in writing in such form as the Secretary may require that benefits are not to be paid from the 1995 Section and has not revoked that notice, and
- (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.

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

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

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

(12) A person exercising an option under this regulation who is entitled to a pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) may count as qualifying service for the purpose of this Section of the Scheme a period of service measured in years and days equal to the qualifying service that person was entitled to count

under regulation C3 of the 1995 Regulations (meaning of qualifying service) in determining their entitlement to that pension.

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

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

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

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

Transfer of service and pensionable earnings from the 1995 Section

3.K.3 Service and pensionable earnings credited from the 1995 Section

(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the Scheme, and
- (b) is not entitled to a pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement),

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

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

(3) The pensionable earnings and service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count is an amount equal to the amount of pensionable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations (meaning of pensionable service).

This is subject to paragraph (9) and regulation 3.K.11.

(4) The pensionable earnings and service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count is an amount equal to the amount of pensionable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 of the 1995 Regulations multiplied by the factor specified in paragraph (8) applicable to the case.

This is subject to paragraphs (5), (8), (9) and (10) and regulation 3.K.11.

(5) In determining the amounts of pensionable earnings up to, and including, 31st March 2008 in paragraph (3) or (4), the Secretary of State shall have regard to—

- (a) the pensionable earnings for any scheme year recorded by the Optant's host Trust or Board;
- (b) the pensionable earnings for any scheme year certified by the Optant in accordance with paragraph 23 of Schedule 2 to the 1995 Regulations.

This is subject to paragraph (6).

(6) If, in respect of any particular scheme year, the pensionable earnings referred to in paragraph (5)(a) or (b) are not available, the Secretary of State shall determine the pensionable earnings for that scheme year and in doing so shall have regard to—

- (a) the contributions paid in accordance with regulation D1 of the 1995 Regulations (as modified by paragraph 10 of Schedule 2 to those Regulations) (contributions by members) or regulation 3.C.1, or
- (b) the figure supplied by the host Trust or Board.

This is subject to paragraph (7).

(7) If—

- (a) the Secretary of State has made a determination of pensionable earnings in accordance with paragraph (6), and
- (b) the pensionable earnings referred to in paragraph (5) that were not available to the Secretary of State at the time of that determination, subsequently become available,

the Secretary of State shall revise that determination accordingly.

(8) The factor referred to in paragraph (4) is the factor specified by the Secretary of State for that purpose.

(9) For the purposes of paragraphs (3) and (4) the pensionable earnings for practitioner service which the 2008 Section Optant was entitled to count under regulation C2 of the 1995 Regulations shall not include any pensionable service the Optant was entitled to count under regulation C2(1)(e) of that Section.

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

3.K.4 Treatment of Additional Pension

(1) This regulation applies to a 2008 Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension (“OPAP”) under regulation Q8 or Q10 or whose employing authority had done so under regulation Q11 of the 1995 Regulations (which deal with the purchase of additional pension by periodical contributions and lump sums).

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

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation Q14 of the 1995 Regulations (effect of payment of additional contributions under this Part),
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation Q13 of those Regulations (cancellation and cessation of options under regulation Q8).

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 3.C.12 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q14 of the 1995 Regulations where the person’s chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation Q14 of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Secretary of State shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

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

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 3.C.14 shall be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q13 of the 1995 Regulations, where the person’s chosen birthday under the OPAP was 65;
- (b) that would have been purchased in the 1995 Section under regulation Q13 of the 1995 Regulations if the person’s chosen birthday had been 65 and, in determining that amount, the Secretary of State shall have regard to the advice of the Scheme actuary, where the person’s chosen birthday under the OPAP was 60.

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

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the Scheme shall do so from the effective date specified in paragraph (5) of regulation 3.K.2.

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1), and
- (b) where at the effective date specified in paragraph (5) of regulation 3.K.2—
 - (i) that person—
 - (aa) was making additional contributions in accordance with an OPAP exercised under regulation Q8 of the 1995 Regulations; or
 - (bb) had applied to make, but had not yet begun making, additional contributions under regulation Q8 of the 1995 Regulations ; or
 - (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation Q10 of the 1995 Regulations ; or
 - (ii) that person’s employing authority had applied to make, but had not yet made, a single lump sum contribution on the person’s behalf, in accordance with an OPAP exercised under regulation Q11 of the 1995 Regulations.

(7) Where paragraph (6) applies and the person’s chosen birthday referred to in regulation Q8 of the 1995 Regulations was 65, the OPAP referred to in that paragraph will apply in this Section of the Scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 3.C.6, 3.C.8 or 3.C.9 would apply in that case.

(8) Where paragraph (6) applies and the person’s chosen birthday referred to in regulation Q8 of the 1995 Regulations was 60, the OPAP referred to in that paragraph will apply in this Section of the Scheme —

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 3.C.6, 3.C.8 or 3.C.9 would apply in that case, and
- (b) after adjustment, having regard to the advice of the Scheme actuary, so that—
 - (i) the amount of the additional pension purchased in this Section of the Scheme is the same as that which would have been purchased in the 1995 Section, but
 - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the Scheme, reduce or (where appropriate) cease to be payable.

This is subject to paragraph (9).

(9) If paragraph (3)(b), (4)(b) or (8) of this regulation applies and—

- (a) the amount of the additional pension calculated in accordance with paragraph (3)(b) or (4)(b) will exceed the limit on the total increase in the member’s pension referred to, as the case may be, in regulation 3.C.6, 3.C.8 or 3.C.9, or
- (b) the limit on the total increase in the member’s pension referred to in regulation 3.C.6 will be exceeded by the amount of additional pension that counts in this Section of the Scheme in accordance with paragraph (8)(b)(i) of this regulation notwithstanding any reduction in, or cessation of, additional contributions payable in accordance paragraph (8)(b)(ii),

the total increase in the member’s pension under this regulation, taken together with any other increase under regulations 3.C.6, 3.C.8 or 3.C.9—

- (i) will be subject to the limit on the total increase in the member’s pension described in regulation 3.C.6, 3.C.8 or 3.C.9, and
- (ii) the amount of additional pension that counts in this Section of the Scheme in accordance with paragraphs (2) to (8) of this regulation that exceeds that limit will be converted to pensionable earnings for the purposes of regulation 3.A.7(10), and in determining the amount of such additional pension to be

converted into pensionable earnings, the Secretary of State shall have regard to the advice of the Scheme actuary.

3.K.5 Treatment of Additional Service and pensionable earnings

(1) A 2008 Section Optant—

- (a) who becomes a member of this Section of the Scheme, and
- (b) is buying or has already bought a period of additional service that counts as pensionable service under regulation C2(1)(e) of the 1995 Section (meaning of pensionable service),

will be able to count an additional amount of pensionable earnings for that pensionable service in this Section of the Scheme as described in whichever of paragraphs (5) or (6) apply to that Optant.

(2) The additional pensionable earnings referred to in paragraph (1) are—

- (a) any additional pensionable earnings bought under regulation Q1, as modified by paragraph 20(2) of Schedule 2 to the 1995 Regulations (right to buy additional service) before the date that person's option to join this Section of the Scheme was received by the Secretary of State in accordance with regulation 3.K.2, and
- (b) any additional pensionable earnings bought under regulation 25 of the National Health Service (Superannuation) Regulations 1980(a) (purchase of added years of contributing service).

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

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

- (a) paragraph (4) of regulation Q1, as modified by paragraph 20(2) or, as the case may be, paragraph 20(4) of Schedule 2 to the 1995 Regulations, in the case of an election that had ceased and was paid for in full by the date referred to paragraph (2)(a),
- (b) paragraphs (1), (4) and (5) (but not (6)) of regulation Q7 of those Regulations (part payment for additional service or unreduced retirement sum), in the case of an election that had ceased but had only partially been paid for at that date, or
- (c) paragraphs (1), (4) and (5) (but not (6)) of regulation Q7 of those Regulations, in the case of an election that remained in force immediately before that date.

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

(4) The additional pensionable earnings referred to at paragraph (2)(b) will be calculated in accordance with whichever of paragraph (3) or (4)(b) of regulation 25 of the National Health Service (Superannuation) Regulations 1980 applies to the Optant.

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

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

- (a) first taking the additional pensionable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies ("APE"), and
- (b) then multiplying APE by the factor specified by the Secretary of State for that purpose.

(a) S.I. 1980/632.

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

- (a) election to buy additional service will cease from that date, and
- (b) any additional contributions due under the election that are unpaid at that date will be deducted from the member's pensionable pay in accordance with regulation 3.K.2 (6) and (7).

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

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

This is subject to regulation 3.K.18.

3.K.6 Treatment of unreduced retirement lump sum

(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the Scheme and, at the date that person's option to join this Section of the Scheme was received by the Secretary of State in accordance with regulation 3.K.2, had made an election under regulation Q2 of the 1995 Regulations (right to buy an unreduced lump sum) to—

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

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

(2) Those conditions are that the election—

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

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

- (a) any additional contributions under the election that were due but not paid at that date will be deducted in accordance with regulations 3.K.2(6) and (7);
- (b) any liability to pay additional contributions will cease from, and including 1st April 2008, and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) will lapse.

3.K.7 Treatment of 2008 Section Optants to whom regulation L4(3) of the 1995 Regulations applied immediately before 1st April 2008

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

- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 3.D and 3.E; and
- (b) who, but for joining this Section of the Scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation L4(3) of the 1995 Section (early leavers returning to pensionable employment).

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

- (a) as a deferred member of this Section of the Scheme in respect of any period of practitioner service and pensionable earnings credited to that Optant under regulation 3.K.3 that relates to one or more periods of practitioner service in the 1995 Section that occurred before a break of 12 months or more in such service (“an earlier service credit”), and
- (b) as if the Optant became an active member for the first time on the first day of any period of practitioner service and pensionable earnings credited to that Optant under regulation 3.K.3 that relates to a period of pensionable service in the 1995 Section that occurred after a break of 12 months or more in such service.

This is subject to paragraph (3).

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

- (a) separately, and
- (b) by reference to the member’s uprated earnings calculated in accordance with paragraph 11 of Schedule 2 to the 1995 Regulations (normal retirement pension) in respect of that particular period.

This is subject to regulation 3.D.7(5)(b)(ii).

3.K.8 Pension debit members

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

(2) The amount of the reduction to be made to the Optant’s pension under this Section of the Scheme shall be the amount of the reduction that applied to the Optant’s pension under the 1995 Section calculated in accordance with section 31 of the 1999 Act (reduction under pension sharing order following divorce or nullity of marriage) adjusted by the factor referred to in paragraph (3).

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

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

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

as the Secretary of State considers necessary for the purpose specified in paragraph (5).

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

3.K.9 Pensionable earnings credited under regulations 3.K.3 and 3.K.5 to be treated as capped Optant pensionable earnings

(1) This regulation applies for the purpose of determining the amount of an Optant’s pensionable earnings (if any) that fall to be treated as capped Optant pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the Optant under this Part.

(2) In paragraph (1) “capped Optant pensionable earnings” means the amount of pensionable earnings that the Optant is entitled to count under regulations 3.K.3 and 3.K.5 in respect of an amount of capped pensionable earnings for service in the 1995 Section up to, and including, 31st March 2008.

(3) For the purposes of paragraph (2), the Optant's pensionable earnings were capped pensionable earnings in respect of service in the 1995 Section so far as—

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

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

(5) In this regulation, "pensionable earnings" has the meaning given in regulation 3.A.7.

Miscellaneous provisions

3.K.10 Transfers in: transitional provision

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

- (a) commenced a period of pensionable service as a practitioner member in the 1995 Section on, or after, 1st April 2008, and
- (b) within one year of the commencement of that service makes an application to transfer accrued rights to benefits to the 1995 Section under regulation N1 of the 1995 Regulations (member's right to transfer accrued rights to benefits to this Section of the Scheme).

(2) If—

- (a) the Secretary of State accepts the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation N1(4) of the 1995 Regulations, and
- (b) that payment is received by the Secretary of State before the day on which the person's option to join this Section of the Scheme is received,

the increase to pensionable earnings that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the Scheme will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).

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

- (a) the Secretary of State may accept that payment under this Section of the Scheme—
 - (i) without requiring the Optant to make an application under regulation 3.F.8, and
 - (ii) subject to such other conditions as the Secretary of State may require, and

- (b) if the Secretary of State accepts the payment, the increase to pensionable earnings that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of that Optant under this Section of the Scheme will be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count will be calculated as described in paragraph (5).

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

- (a) will be calculated in accordance with regulation 3.F.11,
- (b) the financial year in which the member joined this Section of the Scheme for the purposes of regulation 3.F.11(2)(a) will be the financial year in which the Optant's pensionable service referred to in paragraph (1) commenced,
- (c) the starting day for the purpose of regulations 3.F.11(2)(b) and 3.F.11(4) will be the day that the member's pensionable service referred to in paragraph (1) commenced.

This is subject to paragraph (6)

(5) The period of pensionable service that the Optant is entitled to count for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3 will be the relevant period calculated in accordance with regulation 3.F.10.

(6) If the transfer value payment is accepted by the Secretary of State under the public sector transfer arrangements—

- (a) regulation 3.F.12 shall apply to the Optant in respect of the increase to pensionable earnings that the Optant is entitled to count under this regulation, and
- (b) the reference in regulation 3.F.12(2) to the increase to pensionable earnings that the member is entitled to count under regulation 3.F.10(2)(a) shall be read as a reference to the increase to pensionable earnings the Optant is entitled to count under paragraph (4) of this regulation.

3.K.11 Amount of pension and lump sum to be paid to a 2008 Section Optant

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

- (a) is entitled to an annual pension under Chapter 3.D, or
- (b) is entitled to the payment of a transfer value under Chapter 3.F in respect of the pension that has accrued to or, in respect of, that Optant under this Section of the Scheme.

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

- (a) that Optant shall be entitled to the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation that apply to that Optant, and
- (b) the annual amount of pension referred to in paragraph (1)(a) to which that Optant is entitled, shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.

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

- (a) the transfer value shall be calculated by reference to a lump sum determined under paragraph (5) of this regulation, and
- (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated shall be reduced by an amount equal to the amount of the lump sum referred to in paragraph (a) divided by 12.

(4) Except in a case to which paragraph (6), (8), (10) or (12) applies, the amount of the lump sum shall be determined as described in paragraph (5).

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

(5) The amount of lump sum shall be determined by—

(a) applying the formula—

$$3x(1.4\% \text{ of the member's Relevant Up-rated Earnings } \times \text{ Reduction Factor})$$

and

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

(6) In the case of an Optant—

(a) who becomes entitled to an annual amount of pension payable under regulation 3.D.4, and

(b) on the day the Optant becomes entitled to that pension the Optant has not attained age 60,

the amount of lump sum shall be determined as described in paragraph (7).

(7) The amount of lump sum that is to be paid to an Optant referred to in paragraph (6) shall be calculated by—

(a) applying the formula—

$$3x(1.4\% \text{ of the member's Relevant Up-rated Earnings } \times \text{ Reduction Factor})$$

and

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

(8) In the case of an Optant—

(a) who becomes entitled to an annual amount of pension payable under regulation 3.D.5 for the first time, and

(b) on the day the Optant becomes entitled to that pension the Optant has not attained age 60,

the amount of lump sum shall be determined as described in paragraph (9).

(9) The amount of lump sum that is to be paid to an Optant referred to in paragraph (8) shall be calculated by—

(a) applying the formula—

$$3x(1.4\% \text{ of the member's Specified Up-rated Earnings } \times \text{ Reduction Factor})$$

and

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

(10) In the case of an Optant—

(a) who becomes entitled to an annual amount of pension payable under regulation 3.D.5 for the first time, and

(b) on the day the Optant becomes entitled to that pension the Optant has attained age 60,

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

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

(a) applying the formula—

$$3 \times (1.4\% \text{ of the member's Specified Uprated Earnings})$$

and

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

(12) In the case of an Optant—

- (a) who is a pensioner member as respects a pension payable under regulation 3.D.5 as described in paragraph (8)(a) of that regulation, and

- (b) who—

- (i) subsequently exercises an option under that regulation for the second or a final time, or

- (ii) becomes entitled to any other pension under Chapter 3.D in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of lump sum shall be determined by the Secretary of State after taking advice from the Scheme actuary.

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

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

- (a) applying the formula—

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

and

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

(15) If any part of an Optant’s benefit under this Section of the Scheme falls to be calculated by reference to capped Optant pensionable earnings under regulation 3.K.9 the determinations in this regulation shall apply separately in respect of—

- (a) the pension to which the Optant is entitled in respect of the pensionable earnings that falls to be calculated by reference to capped Optant pensionable earnings, and

- (b) the pension to which the Optant is entitled in respect of the pensionable earnings that does not fall to be calculated by reference to capped Optant pensionable earnings.

(16) If the benefits of an Optant to whom this regulation applies are subject to the modifications provided for in Part 4—

- (a) the amount of—

- (i) the lump sum referred to in paragraph (2)(a) and in regulation 2.K.12(2)(a), and

- (ii) the reduction in the annual amounts of pension referred to in paragraph (2)(b) and in regulation 2.K.12(2)(b),

will be calculated without regard to those modifications,

- (b) if any pension included in the “reference amount” or, as the case may be, the “base amount” referred to in regulations 4.C.1(1) and 4.A.2 (respectively) and payable to a member under Part 4, will, on the member’s retirement, attract an immediate increase under the Pensions (Increase) Act 1971,

- (c) the amount of any lump sum referred to in sub-paragraph (a)(i) that is based on a pension that will attract an immediate increase under the Pensions (Increase) Act 1971, will—
 - (i) be increased in like manner, and
 - (ii) give rise to a corresponding increase in the reduction to the corresponding annual amount of pension referred to in sub-paragraph (a)(ii), and
- (d) the total of the amounts referred to in sub-paragraph (a)(i) and (a)(ii), together with any increases described in sub-paragraph (c), will apply to the “reference amount” or, as the case may be, the “base amount” referred to in regulations 4.C.1(1) and 4.A.2 (respectively) payable to a member under Part 4.

(17) For the purposes of this regulation—

“1995 Section Pension Debit” is the amount by which the Optant’s annual pension under the 1995 Regulations was to be reduced in accordance with section 31 of the 1999 Act;

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

“Increase Factor” is the factor that would have applied to the 1995 Section Pension Debit for the purposes of section 29 of the 1999 Act if the Optant had become entitled to a pension under the 1995 Regulations—

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

“Relevant Uprated Earnings” are the uprated earnings for the period of practitioner service (expressed in days) equal to the aggregate of—

- (a) the amount of uprated earnings for pensionable service that the Optant is entitled to count under regulation 3.K.3, and
- (b) the amount of additional pensionable earnings for additional service (if any) that the Optant is entitled to count under regulation 3.K.5;

“Reduction Factor” is the reduction factor that the Secretary of State, after taking advice from the Scheme actuary, determines would have applied to that Optant’s lump sum retiring allowance under regulation E6(7)(b) of the 1995 Regulations (lump sum on retirement) if that Optant had become entitled to a pension calculated under regulation E5 (early retirement pension (with actuarial reduction)) of those Regulations on the day he became entitled to a pension under regulation 3.D.4 or, as the case may be, regulation 3.D.5;

“Specified Uprated Earnings is the amount of the Optant’s Relevant Uprated Earnings multiplied by the percentage of the member’s pension in respect of which the member claims immediate payment under regulation 3.D.5(3)(a) (“the specified percentage”).

3.K.12 Nominations and notices accepted by the Secretary of State under the 1995 Regulations to apply under Chapter 3.E of these Regulations

(1) This regulation applies if—

- (a) the Secretary of State has accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a 1995 Section member, and
- (b) on the day that the Secretary of State receives that person’s option to join this Section of the Scheme, that person has not revoked that nomination or notice.

(2) The nominations and notices referred to in paragraph (1) are—

- (a) a nomination made in accordance with regulation F5 of the 1995 Regulations (payment of lump sum) in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations (which deal with lump sum payments on the death of a member in different circumstances);
- (b) a notice provided for the purposes of paragraph (3)(a) of regulation F5 of the 1995 Regulations that the person's surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 1995 Regulations;
- (c) a notice provided for the purpose of regulation G14 of the 1995 Regulations (surviving nominated partner's pension) nominating a partner to receive a surviving nominated partner pension.

(3) For the purpose of this Section of the Scheme a nomination or notice referred to in paragraph (1) shall be treated—

- (a) in the case of the nomination referred to in paragraph (2)(a), as if that nomination has been accepted by the Secretary of State as a notice for the purposes of regulation 3.E.21,
- (b) in the case of a notice referred to in paragraph (2)(b), as if that notice had been accepted by the Secretary of State as a notice for the purposes of regulation 3.E.21 specifying that the Optant's personal representatives are to receive any lump sum or pension on the death of the Optant, and
- (c) in the case of a notice referred to in paragraph (2)(c), as if that notice had been accepted by the Secretary of State as a declaration for the purposes of regulations 3.E.2.

3.K.13 2008 Section Optants: Transitional Tier 2 ill-health pension

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

- (a) who has submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and
- (b) that form and supporting medical evidence was received by the Secretary of State before the date on which the Secretary of State received the Optant's option to join this Section of the Scheme.

(2) If the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 3.D.7(3) ("a tier 2 ill-health pension") within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received—

- (a) that Optant's pensionable service shall be increased by the enhancement period determined in accordance with paragraph (3) of this regulation ("the transitional enhancement period"), and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 3.D.7(6).

This is subject to paragraph (5).

(3) In this regulation—

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

This is subject to paragraph (4).

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

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

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

3.K.14 Treatment of ill-health retirement applications made by 2008 Section Optants within one year of joining this Section of the Scheme

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

- (a) who submits a form AW33E (or such other form as the Secretary of State is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 3.D.7, and
- (b) that form and supporting medical evidence is received by the Secretary of State before the end of the period of one year commencing on the day the Secretary of State received the Optant's option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 3.D.7(3) (“a tier 2 ill-health pension”)—

- (a) that Optant's pensionable service shall be increased by the enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 3.K.13 apply to the Optant, and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 3.D.7(6).

This is subject to paragraph (3).

(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

3.K.15 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill-health retirement under the 1995 Section

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

- (a) who submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement), and
- (b) that form and supporting medical evidence was received by the Secretary of State before the date on which the Secretary of State received the Optant's option to join this Section of the Scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), the Optant referred to in that paragraph becomes entitled to a pension under regulation 3.D.7(2) (“a tier 1 ill-health pension”)—

- (a) within a period of one year beginning with the day on which that Optant's option to join this Section of the Scheme is received, and
- (b) immediately before joining this Section of the Scheme the Optant was notified under regulation E2B of the 1995 Regulations (re-assessment of ill-health

condition determined under regulation E2A) that the Optant may ask the Secretary of State to consider whether that Optant subsequently meets the tier 2 condition under that regulation,

that Optant shall be entitled to a re-assessment of entitlement to an ill-health pension determined under regulation 3.D.8 in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 3.D.7(3)(a) at the date of the Secretary of State's review, "permanently" shall mean until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 3.D.8, the Secretary of State determines that the Optant meets the condition in regulation 3.D.7(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 3.D.7 but which shall be calculated in accordance with paragraph (5) of this regulation.

(5) For the purpose of calculating the tier 2 ill-health pension referred to in paragraph (4)—

- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 3.K.13 apply to that Optant, and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 3.D.7(6).

This is subject to paragraph (6).

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

- (a) regulation 3.K.13 shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Secretary of State's determination under regulation 3.D.8" after "continued in service", and
- (b) references to the "enhancement period" in regulation 3.D.7 are to be read as references to the "transitional enhancement period" determined under this regulation.

3.K.16 Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill-health retirement under the 2008 Section within a year of joining the 2008 Section

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

- (a) who submits a form AW33E (or such other form as the Secretary of State is willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation 3.D.7,
- (b) that form and supporting medical evidence was received by the Secretary of State before the end of the period of one year commencing on the day the Secretary of State received the Optant's option to join this Section of the Scheme, and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a)—
 - (i) the Optant becomes entitled to a tier 1 ill-health pension under regulation 3.D.7, and
 - (ii) at the time the Optant is awarded a pension under that regulation the Secretary of State gives the Optant notice in writing in accordance with regulation 3.D.8(1)(b) that the Optant's case may be considered once within a period of

three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 3.D.7(3)(a) at the date of such a consideration.

(2) If, after considering the further medical evidence provided by the Optant under regulation 3.D.8, the Secretary of State determines that the Optant meets the condition in regulation 3.D.7(3)(a), then as from the date on which that determination is made the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension; and
- (b) becomes entitled to a tier 2 ill-health pension under regulation 3.D.7 but which shall be calculated in accordance with paragraph (3) of this regulation.

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

- (a) the Optant's service shall be increased by the transitional enhancement period determined in accordance with whichever of paragraphs (3) or (4) of regulation 3.K.13 apply to that Optant, and
- (b) the transitional enhancement period shall apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 3.D.7(6).

This is subject to paragraph (4).

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

- (a) regulation 3.K.13 shall be read as if paragraph (3)(b) of that regulation included the words "from the date of the Secretary of State's determination under regulation 3.D.8" after "continued in service", and
- (b) references to the "enhancement period" in regulation 3.D.7 are to be read as references to the "transitional enhancement period" determined under this regulation.

3.K.17 Late payment of pension with actuarial increase for a 2008 Section Optant

(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 3.D.1 after reaching the age of 65.

(2) In the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—

- (a) the pensionable service and earnings that Optant is entitled to count under—
 - (i) regulation 3.K.3,
 - (ii) regulation 3.K.5 (if any), and
 - (iii) this Section of the Scheme on or after 1st April 2008 but before reaching the age of 65, and
- (b) any contributions paid under regulations 3.C.6, 3.C.8 or 3.C.9 before reaching that age,

shall be increased in accordance with paragraph (4).

This is subject to paragraph (6).

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

- (a) before that pension had been reduced in accordance with regulation 3.K.11, and
- (b) before any commutation under regulation 3.D.10.

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

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

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

(6) The increase shall apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 3.D.3.

3.K.18 Transitional provision: Treatment of additional service and pensionable earnings in respect of Optants retiring on the grounds of ill-health

(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with paragraph (3) of regulation 3.K.5.

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E2A of the 1995 Regulations (ill-health pension on early retirement);
- (b) that form and supporting medical evidence was received by the Secretary of State before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q6 of the 1995 Regulations as modified by paragraph (20) of Schedule 2 to the 1995 Regulations (paying for additional service or unreduced retirement lump sum by regular additional contributions); and
- (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 3.D.7 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,
that Optant will not be entitled to count a period of pensionable service under regulation 3.K.5 and—
 - (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect that period of additional service shall be returned to the Optant in accordance with regulation Q7(2) of the 1995 Regulations (part payment for additional service or unreduced retirement sum); and
 - (ii) paragraph (8) of regulation 3.K.5 will not apply.

(3) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E2A of the 1995 Regulations;
- (b) that form and supporting medical evidence was received by the Secretary of State after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q6 of the 1995 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in (a) that Optant becomes entitled to a tier 1 or tier 2 ill-health pension under regulation 3.D.7 within a period of one year beginning with the day on which the Optant's option to join this Section of the Scheme is received,

in addition to the pensionable service that Optant is entitled to count under regulation 3.K.5, that Optant shall also be entitled to count a period of pensionable service determined under paragraph (4) of this regulation.

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

- (a) the period of service the Optant is entitled to count under regulation 3.K.5, and
- (b) the period of service the Optant elected to purchase under regulation Q1 of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to the 1995 Regulations calculated in accordance with regulation Q7(3) of the 1995 Regulations as modified by paragraph 20 of Schedule 2 to the 1995 Regulations and as if the member had become entitled to a pension under regulation E2A of those Regulations on the day the Secretary of State received that Optant's option to join this Section of the Scheme.

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

3.K.19 Treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable

(1) This regulation applies if a 2008 Section Optant who becomes a member of this Section of the Scheme—

- (a) is entitled to benefits under this Part,
- (b) has a period, or periods, of officer service under Part 2 that entitle the Optant to have benefits considered under Part 4, and
- (c) has transferred—
 - (i) service up to 31st March 2008 from the 1995 Section that counts under regulation 2.K.3, or
 - (ii) service and pensionable earnings up to 31st March 2008 from the 1995 Section that counts under regulation 3.K.3.

(2) If paragraph (1) applies—

- (a) pensionable service transferred from the 1995 Section under regulation 2.K.3(4) will count at the full length determined before application of the factor specified in that regulation, for the purpose of comparing benefits payable as calculated in accordance with regulations 4.B.2 to 4.B.7A;
- (b) pensionable service transferred from the 1995 Section under regulation 2.K.3(4) and pensionable earnings transferred from the 1995 Section under regulation 3.K.3(4) will count at the length or value determined after the application of the factor specified in those regulations for the purpose of calculating—
 - (i) any reference amount referred to regulations 4.B.2 to 4.B.7A, and
 - (ii) any top up amount referred to in regulation 4.C.1 or, as the case may be, 4.C.2.

This is subject to paragraphs (4) and (5).

(3) This paragraph applies if a 2008 Section Optant has—

- (a) officer service that counts under regulation 2.K.3(4), or
- (b) pensionable earnings in respect of practitioner service that counts under regulation 3.K.3(4), and
- (c) that officer service or those pensionable earnings comprise two or more periods (separated by at least one day) of such service or two or more periods (separated by at least one day) in respect of which such earnings were earned.

(4) Where paragraph (3) applies, each separate period of officer service or each separate period in respect of which pensionable earnings were earned, shall be calculated using the formula set out in paragraph (5) for the purposes of calculating—

- (a) any reference amount referred to in regulations 4.B.2 to 4.B.7A, and

- (b) any top up amount referred to in regulation 4.C.1 or, as the case may be, 4.C.2.
- (5) That formula is—
- (a) where paragraph (3)(a) applies—

$$TNS \times \frac{PGS}{TGS}$$

where—

TNS is the total (net) service transferred to this Section of the Scheme under paragraph (4) of regulation 2.K.3, after multiplying by the factor applicable to the case;

PGS is any part (gross) period of service within the total transferred to this Section of the Scheme under paragraph (4) of regulation 2.K.3, before multiplying by the factor applicable to the case, and

TGS is the total (gross) service transferred to this Section of the Scheme under paragraph (4) of regulation 2.K.3;

- (b) where paragraph (3)(b) applies—

$$TNE \times \frac{PGE}{TGE}$$

where—

TNE is the total net uprated pensionable earnings transferred to this Section of the Scheme under paragraph (4) of regulation 3.K.3, after multiplying by the factor applicable to the case;

PGE is any part gross amount of uprated pensionable earnings within the total transferred to this Section of the Scheme under paragraph (4) of regulation 3.K.3, before multiplying by the factor applicable to the case, and

TGE is the total gross amount of uprated pensionable earnings transferred to this Section of the Scheme under paragraph (4) of regulation 3.K.3.

3.K.20 Circumstances in which a 1995 Section member may defer making an option to join this Section of the Scheme under regulation 3.K.2

- (1) This regulation applies to a person who—
- (a) on, or after, 1 October 2009—
- (i) is an active member of the 1995 Section, or
- (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in paragraph (4)(a) of regulation P1 of that Section (absence because of illness or injury or certain types of leave),
- (b) has submitted a form AW33E (or such other form as the Secretary of State was willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill-health pension payable in accordance with regulation E2A of the 1995 Regulations (ill-health pension on early retirement),
- (c) that form and supporting medical evidence was received by the Secretary of State—
- (i) before the date on which a comparative statement of benefits under the 1995 Section and the 2008 Section of the Scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 3.K.2; or
- (ii) if such a statement has been issued to that person, before the date specified by the Secretary of State for the purposes of paragraph (3) of that regulation.

(2) A person to whom paragraph (1) applies may opt to join this Section of the Scheme in accordance with paragraph (3).

(3) The option under paragraph (2) may only be exercised if—

- (a) the person gives notice in writing to the Scheme administrator in such form as the Secretary of State requires, and
- (b) that notice is received by the Scheme administrator within a period of four months starting with, where—
 - (i) that person is sent a written notification of the Secretary of State’s decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the tier 1 or the tier 2 condition specified in regulation E2A of the 1995 Section (“the first decision”), the date of that decision;
 - (ii) that person is sent a written notification of the Secretary of State’s decision in respect of the stage one dispute, (“a stage one decision”), the date of that decision;
 - (iii) that person is sent a written notification of the Secretary of State’s decision in respect of the stage two dispute, (“ a stage two decision”), the date of that decision; or
 - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman, the date of that determination.

This is subject to paragraph (4).

(4) Paragraph (3) shall cease to apply to any person if at any time that person—

- (a) returns to practitioner service, or
- (b) claims a pension under regulation E5 or L1 of the 1995 Regulations (which deal with an early retirement pension (with an actuarial reduction) and preserved pensions respectively).

(5) For the purpose of this regulation—

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

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

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

3.K.21 2008 Section Optants who are in receipt of a tier 1 ill-health pension under Regulation E2A of the 1995 Regulations

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

- (a) is entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section (“the earlier 1995 Section service”), and
- (b) becomes entitled to a tier 1 ill-health pension or, as the case may be, a tier 2 ill-health pension under regulation 3.D.7 in respect of service in this Section of the Scheme (“the later 2008 Section service”).

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

(3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 3.D.7, to—

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

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

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

- (a) the member's tier 1 ill-health pension under regulation E2A of the 1995 Regulations in respect of the member's earlier 1995 Section service, and
- (b) a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the member's later 2008 Section service.

This is subject to paragraph (5) and regulations 3.K.13 to 3.K.16 and 3.K.18.

(5) If the Optant—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier 1995 Section service,
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier 1995 Section service in accordance with regulation E2B of the 1995 Regulations (re-assessment of ill health condition under regulation E2A), and
- (c) becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of the later 2008 Section service on the termination of that later service,

the Optant is entitled to the benefits set out in paragraph (6).

(6) Those benefits are—

- (a) a tier 2 ill-health pension paid in accordance with regulation E2B of the 1995 Regulations in respect of the earlier 1995 Section service, and
- (b) a tier 1 ill-health pension in respect of the later 2008 Section service.

3.K.22 Lump sum payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations

(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—

- (a) is entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section, and
- (b) is an active or a non-contributing member in respect of service in this Section of the Scheme ("the later 2008 Section service").

(2) The lump sum payable on the death of an Optant referred to in paragraph (1) shall be—

- (a) calculated in accordance with whichever of paragraphs (3), (4) or (5) applies to that Optant, and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 3.E.17.

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 3.D.7(5), if the deceased Optant had not reached the age of 65, or
- (b) payable under regulation 3.D.1, if the deceased Optant had reached the age of 65,

to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to five times the annual rate of pension—

- (a) payable under regulation 3.D.7(5), if the deceased Optant had not reached the age of 65, or
- (b) payable under regulation 3.D.1, if the deceased Optant had reached the age of 65,

to which the Optant would have been entitled on the last day of the Optant's pensionable service.

(5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) shall be determined by the Secretary of State after taking advice from the Scheme actuary.

3.K.23 Children's pensions payable on the death of a 2008 Section Optant who is in receipt of a tier 1 ill-health pension under regulation E2A of the 1995 Regulations

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

- (a) at the date of the Optant's death—
 - (i) an active member,
 - (ii) a non-contributing member,
 - (iii) a pensioner member, or
 - (iv) a deferred member, and
- (b) on that date was entitled to a tier 1 ill-health pension under regulation E2A of the 1995 Regulations (ill-health pension on early retirement) in respect of service in the 1995 Section ("the earlier 1995 Section service").

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), "the basic death pension" for the purposes of paragraph (3) of regulation 3.E.10 shall have the meaning given in paragraph (3) of this regulation.

(3) The "basic death pension" means twice the appropriate proportion of the deceased member's pension under regulation 3.D.1 and—

- (a) in the case of a deceased Optant who was, at the date of the Optant's death, an active member that pension will include the greater of—
 - (i) any increase due to such enhancement period that would have applied for the purposes of regulation 3.D.7(5) if the deceased Optant had become entitled to a tier 2 ill-health pension at that date, and
 - (ii) the deceased Optant's later 2008 Section service as an active member plus the difference between—
 - (aa) the aggregate of the deceased Optant's earlier 1995 Section service and the later 2008 Section service as an active member, and
 - (bb) 10 years pensionable service,

where the amount of service in (aa) is less than that specified in (bb);

- (b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii), the pensionable service that the deceased Optant was entitled to count under this Section of the Scheme on the date of that Optant's death.

(4) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of paragraph (3) of regulation 3.E.11 shall have the meaning given in paragraph (5) of this regulation.

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

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

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

(6) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of paragraph (3) of regulation 3.E.12 shall have the meaning given in paragraph (7) of this regulation.

(7) The “basic death pension” means—

- (a) if the deceased Optant died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 3.E.10 if the deceased Optant had died on the day of so ceasing (disregarding any additional pension), and
- (b) if the deceased Optant died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
 - (i) twice the appropriate proportion of the pension to which the deceased Optant would have been entitled if the deceased had become entitled to a pension under regulation 3.D.1 on the date of death (disregarding any additional pension), and
 - (ii) twice the appropriate proportion of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant’s later 2008 Section service that has been deferred plus the difference between—
 - (aa) the aggregate of the deceased Optant’s earlier 1995 Section service and the later 2008 Section service that has been deferred, and
 - (bb) 10 years pensionable service,

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

Amendment of regulation 4.A.2

95. In regulation 4.A.2 (interpretation: general),—

- (a) at the appropriate place in the alphabetical order, insert—
 - ““calculation method D” means the calculation method provided for in regulation 4.B.11;
 - “increment period” has the meaning given in regulation 4.B.11(2);”;
- (b) omit the definition of “type 1 practitioner”.

Amendment of regulation 4.B.1

96. In paragraph (2)(a) and (b) of regulation 4.B.1 (application of Chapter 4.B), omit “type 1”.

Amendment of regulation 4.B.2

97. In paragraph (1) of regulation 4.B.2 (cases with up to 10 years officer service), omit “type 1”.

Amendment of regulation 4.B.3

98. In regulation 4.B.3 (cases with more than 10 years of officer service), omit “type 1”.

New regulation 4.B.7A

99. After regulation 4.B.7 (cases with 1 year or more of concurrent officer service), insert—

“Non-concurrent Officer and Practitioner Service

4.B.7A Cases with non-concurrent officer service between periods of practitioner service

(1) Where a member who, before commencing the member’s final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—

- (a) that officer service is preceded by an earlier period of practitioner service, and
- (b) some or all of the member’s officer service is not concurrent with the practitioner service,

the reference amount in respect of such part of that officer service that is not concurrent with practitioner service shall be the better of—

- (i) the amount determined by calculation method D, and
- (ii) the base amount.”.

Amendment of regulation 4.B.8

100.—(1) Regulation 4.B.8 (calculation method A) shall be amended as follows.

(2) Before “Calculation method A”, insert paragraph number “(1)”.

(3) After the newly numbered paragraph (1), insert—

“(2) Where paragraph (1) applies—

- (a) the member is entitled to count part of the period of officer service referred to in that paragraph as a result of a transfer-in under regulation 3.F.10, and
- (b) the transfer-in is other than a transfer-in referred to in regulation 3.F.11(6),

for the purposes of any calculation under regulation 4.B.2(1)(a) or 4.B.3(a), the amount of the pensionable pay deemed to be received in respect of that part period of officer service will be calculated in accordance with regulation 3.F.11(2).”.

New regulation 4.B.11

101. After regulation 4.B.10 (calculation method C), insert—

“4.B.11 Calculation method D

(1) Calculation method D is the aggregate of the amounts payable under paragraphs (2), (3) and (4) of this regulation.

(2) The amounts payable under this paragraph are the additional amount that would be payable under Part 2 for the member’s period, or periods, of non-concurrent officer service (described in regulation 4.B.7A of this Part) in respect of the member’s pension and any retirement lump sum payable—

- (a) as a result of the member exercising the option under regulation 3.D.10, and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 3.K.11,

if those amounts were each subject to a 1.5% increase for each whole year or part of a year within the increment period.

This is subject to paragraph (5).

(3) The amounts payable under this paragraph are the amounts that would be payable under Part 2 for the member's period, or periods, of non-concurrent officer service (described in regulation 4.B.7A of this Part), were it not for the additional amounts calculated under paragraph (2).

(4) The amounts payable under this paragraph are the amounts payable under Chapter 3.D.

(5) For the purposes of paragraph (2)—

- (a) the increase referred to in that paragraph shall—
 - (i) be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act 1971(a), and
 - (ii) be effective immediately before the pension and lump sum become payable with the member's benefits from practitioner service under Chapter 3.D, and
- (b) the increment period referred to in paragraph (2) shall—
 - (i) begin with the day immediately following the day on which the officer service referred to in paragraph (2) ceased for the last time, and
 - (ii) end with the day immediately before the pension and retirement lump sum become payable with the member's benefits from practitioner service under Chapter 3.D.”.

Amendment of regulation 4.C.1

102. In paragraphs (1) and (2) of regulation 4.C.1 (top-up where reference amount greater than base amount), for “4.B.7” substitute “4.B.7A”.

Schedule

103. Schedule 2 shall have effect.

PART 4

Amendment of the National Health Service (Injury Benefits) Regulations 1995

Amendment of the National Health Service (Injury Benefits) Regulations 1995

104.—(1) The National Health Service (Injury Benefits) Regulations 1995(b) shall be amended as follows.

(2) In regulation 2 (interpretation), in the definition of “NHS employment” after “1995” insert “and in the National Health Service Pension Scheme Regulations 2008”.

(a) 1971 c.56.

(b) S.I. 1995/866. The relevant amending instrument is S.I. 2000/606.

PART 5

Amendment of the National Health Service (Additional Voluntary Contributions) Regulations 2000

Amendment of the National Health Service (Additional Voluntary Contributions) Regulations 2000

105.—(1) The National Health Service (Additional Voluntary Contributions) Regulations 2000(a) shall be amended as follows.

(2) In paragraph (b) of regulation 20 (loss of rights to benefits), for “of those Regulations” substitute “of the 1995 Regulations or regulation 2.J.7 or 3.J.7 of the 2008 Regulations”.

(3) In Schedule 2 (pension sharing on divorce or nullity of marriage or dissolution or nullity of civil partnership)—

- (a) in paragraph (6)(1), for “described in regulation 3(2) of the Pension Sharing (Pension Credit Benefit) Regulations 2000 (commutation of pension benefit)” substitute “referred to in paragraphs (b), (e) and (f) of the lump sum rule in section 166(1) of the 2004 Act”;
- (b) in paragraph (14)(1)(b) (loss of rights to benefits), for “of those Regulations” substitute “of the 1995 Regulations or regulation 2.J.7 or 3.J.7 of the 2008 Regulations”.

PART 6

Miscellaneous

Option to persons detrimentally affected by these Regulations

106.—(1) This regulation applies in relation to any benefit which is being paid or may become payable under the regulations amended by these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified the person to participate in the benefits provided under the regulations amended by these Regulations, ceased to serve therein before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than that person would have been if that provision had not applied, that person may elect that the provision shall not apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within six months of the coming into force of these Regulations or such longer period as the Secretary of State may allow.

(4) An election pursuant to paragraph (2) shall have effect in relation to the benefit referred to in paragraph (1) only to the extent that such benefit has accrued by virtue of periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the benefit to that extent, such person shall be treated as if that person had never recommenced service at any time after that cessation (or, as the case may be, the last such cessation).

Signed by authority of the Secretary of State for Health.

2nd September 2009

Phil Hope
Minister of State,
Department of Health

(a) S.I. 2000/619. The relevant amending instrument is S.I. 2008/655.

We consent

4th September 2009

Dave Watts
Bob Blizzard

Two of the Lords Commissioners of Her Majesty's Treasury

SCHEDULE 1

PART 1

1. In the following provisions before “the Scheme”, insert “this Section of”—

(a) regulation:		
A1 in the definition of— (i) employing authority (at paragraph (d)) (ii) member (twice) and (iii) normal benefit age	H3(2) and (2A)	P1(2), (3) and (5)
A3(10),(11) and (12)	H4(1)	P2(1)(twice) and (2)(twice)
B1 in the heading and in (1),(2),(3)(three times), (3A) and (4)(twice)	H5(2A)	Q1(1),(4),(6A), (9) and (11)(in the definition of “pension debit member”)
B2(1)(five times), (3) and (6)	J1(1), (4) and (7)	Q2(1)
B3 in the heading and in (1),(2)(twice), (3)(twice), (4) and (7) (twice)	J2(4)	Q4(1)
B4 in the heading and in (1)(twice),(1A),(3)(three times),(5)(three times), (5A) (four times),(6) and (7)	K2(1)	Q5(1)
B5 in the heading (1)(twice),(2), (3) and (4)	K4(1) and (3)	Q6(6) Q9 in the heading
C1(3)(twice),(3A) and (4)	K5 in the heading and in (1) (four times)	R2(1) and (4)
C2(1)(twice) and (2)	K6 in the heading and in (1)	R3(1)(twice)
C3(4A) and (6)	K7(2)(twice)	R4(2)(twice) and (12)
D1(1), (2D),(2W),(2X), (2Y) and (2Z)	L1(1)	R6(4)
D2(1) and (2)	L2(3)(twice) and (7)	R8(2)(three times), (3) and (4)
E2(11)	L3(3)	R8A(1), (2) and (3)(twice)
E2A(11)	L4(1),(5) and (7A)	R9(5)
F2(1) and (8)	M1(1), (2) and (6)	R12(1)
F3(1)	M2(1)	S1(2)
F5(6)(twice) and (9)	M3(1) and (2)(three times)	S2(2), (4), (5), (14)(in the definitions of “continuing employment” and “pension”) and (15)(twice)
G1(3)	M5(4) and (7)	T2

G2(3),(4) and (5)	M7(1), (3), (10)(twice), (12) and (14)(twice)	T3(1), (2) and (3)
G3(1)	N1 in the heading and in (1), (3)(twice) and (4)	T6(1)
G4(2) and (2A) G6(3)	N3(2) N3A in the heading an in (2)(three times), (3)(three times) and (5) (three times)	T7(3)
G16(1)		

(b)
Schedule 2
paragraph

2(2) 2A(1) and (2)	9A(2) 10 in the heading and in (18)	18(1) and (2)(twice) 21(2)(twice),(3)(twice) and (5)
4(1) 9(4), (6), (6A) and (11)	11A(1) and (2) 14(2)	22(3),(4) and (5) 23(6)(twice) and (8)

(c)
Schedule 2A
paragraph

3(1) 6(1)	7(1) and (6) 8(twice)	9
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PART 2

2. In the following provisions for “2008 Scheme”, substitute “2008 Section”—

regulation

A2 in the definition of “2008 Scheme”	L1(14) (“in the definition of NHS employment”)	M7in the heading and in (3),(7), (12) and (14)(three times)
B2(1) and (2)		

PART 3

3. In regulation K1 for “The Scheme”, substitute “This Section of the Scheme”.

4. In regulation N4(1) and R8(5) for “this Scheme”, substitute “this Section of the Scheme”.

SCHEDULE 2

PART 1

1. In the following provisions before “the Scheme”, insert “this Section of”—

(a) regulation:			
2.A.1(1) in the definition of active member.	2.F.14(1)(b)		3.E.25(1)(a) and (5)(i)
2.A.1(2) in the definition of —			
(i) deferred member			
(ii) non-contributing member (at paragraph (b))			
(iii) pensioner member			
(iv) public sector transfer arrangements.			
2.A.1(3)			
2.A.1(4)			
2.A.2(1)(a)	2.F.15(1)(c),(2) and (3)		3.E.26(1)
2.A.4(2), (3), (3A), (4)(a)(ii),(6)(c),(9)	2.F.17(1),(2)(c),(3)(a) and (b) and (4)(a)		3.F.1(3)(a) and (4) 3.F.2(1)
2.A.5(1)(f)(twice),(3)(b)	2.G.1(1)(three times) and (6) and in the heading 2.G.3(1)(a)		3.F.4(3)(a)
2.A.6(4)(a),(6)(b)	2.H.1(1)(a) and (4)		3.F.7(1)
2.A.7(2)	2.H.4(1)(a)		3.F.8(1)
2.A.8(1)	2.J.5(1)(twice)		3.F.9(1)(c)
2.A.9(10)			
2.A.12(1)	2.J.7(2)(a)		
2.A.15(8), (9)(b),(10)	2.J.8(1)		3.F.11(6)(twice)
2.B.1(1)	2.J.9(2) and (7)(a)		3.F.14(1)(b)
2.B.2(1),(2),(3),(5)(twice),(6), (7), (8),(9)and (12)	2.J.10(1)		
2.B.3(1),(6)	2.J.13(1) and (2)		3.F.15(1)(c), (2) and (3) 3.F.16(2) 3.F.17(2)(c),(3)(a) and (b) and (6)(c)
2.B.4(1),(3) and in the heading			
2.B.5(1),(6)(b) and in the heading	2.J.14(6)(twice) and (8)		3.G.1(1)(four times) and (6)
2.B.6(1) and (2)(twice) and in the heading	3.A.1(1) in the definition of active member. 3.A.1(2) in the definition of—		3.G.3(1)(a)
	(i) deferred member		

	(ii) non-contributing member (at paragraph (b))	
	(iii) pensioner member	
	(iv) public sector transfer arrangements	
2.C.1(1),(11)(a) and (14)	3.A.2(1)and (2)	3.G.4(5)(b)
2.C.3(3)(a),(22)(c),(23)(c),(24)(c), (25)(c) and (27)(twice)	3.A.3(1)(a)	3.H.1(2)(a) and (5)
2.C.5(1)(twice),(2)(b) and (4)	3.A.4(2),(3), (3A), (4)(a)(ii),(6)(c) and (9)	3.H.4(1)(a)
2.C.9 in the heading	3.A.5(1)(e)(twice) and (3)(a)	3.J.5(1)(twice)
2.C.18(5)(twice) and (9)	3.A.6(4)(a) and (6)(b)	3.J.7(2)(a)
2.D.6(5)	3.A.8(2)(a), (7) and (10)	3.J.8(1)
2.D.12(3)(three times) and (7)	3.A.16(8),(9)(b) and (10)	3.J.13(1) and (2)
2.D.13(6)(a)	3.B.1(1) and (5)(e)(ii)	3.J.9(2) and (7)(a)
2.D.14(1)	3.B.2(1),(2),(3) (twice),(4),(5),(6), and (7)	3.J.10(1)
2.D.18(1),(2) and (6)(c)	3.B.3	3.J.13(1) and (2)
2.D.21(1) and (5)(a)	3.B.4(1) and (3) and in the heading	3.J.14(5)(b) (twice), (8)(twice) and (10)
2.D.22(1)(twice), (2),(7)(three times),(9) and (10)(a)	3.B.5(1),(6)(b),(7)(twice) and in the heading	
2.E.3(4)(b)	3.B.6(1) and (2)(twice) and in the heading	
2.E.6(1)(a)	3.B.7(2)	
2.E.10(1)	3.C.1(1) and (3)	
	3.C.3(1), (2) and (4)	
	3.C.5(20)(a)	
	3.C.7 in the heading	
2.E.11(1)	3.C.16(5) (twice) and (9)	
2.E.12(1)	3.D.6(4)	
	3.D.10(1)	
	3.D.14(1), (2) and (6)(c)	
2.E.15(1)	3.D.17(1) and (5)(a)	
2.E.25(1)(a),(5)(i)	3.D.18(1)(twice), (2)(a) and (7)(three times)	
2.E.26(1)	3.E.3(4)(b)	
2.F.1(3)(a) and (4)	3.E.6(1)(a)	
2.F.2(1)	3.E.10(1)	
2.F.7(1)	3.E.11(1)	
2.F.8(1)	3.E.12(1)	
2.F.9(1)(c) and (3)	3.E.15(1)	
2.F.10(2)		
2.F.11(6)(twice)		

PART 2

2. In the following provisions for “NHS Pension Scheme 1995”, substitute “1995 Section”—

regulation			
	2.A.2(8)(twice)	2.F.17(1) and in the heading	3.B.2(1)(twice)
	2.A.5(1)(b) and (f)(ii)	3.A.3(9)(twice)	3.F.17 (1) and (4)(a) and in the heading
	2.B.1(3)(b),(5)(a),(d) and in the full out words and (6)(a)	3.A.5(1)(b)	4.D.1(5)(twice)
	2.B.2(2)(twice)	3.B.1(3)(b).(5)(seven times),(6)(a)	

PART 3

3. In the following provisions for “that Scheme”, substitute “that Section”—

regulation		
	2.A.2(8)(twice)	3.B.1 (nine times)
	2.B.1(5)(nine times)	3.B.2(1)(three times)
	2.B.2(2)(three times)	4.D.1(5)(twice)

4. In regulation 2.B.1(3) and (5) and 3.B.1(5) for “other scheme conditions”, substitute “other Section conditions”.

5. In regulation 2.F.17(1) and (2) and 3.F.17(1) and (2) after “this”, insert “Section of the”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the National Health Service Pension Scheme Regulations 1995 (S.I. 1995/300) (“the 1995 Regulations”), the National Health Service Pension Scheme Regulations 2008 (S.I. 2008/653) (“the 2008 Regulations”), the National Health Service (Injury Benefits) Regulations 1995 (S.I. 1995/866) (“the Injury Benefits Regulations”) and the National Health Service (Additional Voluntary Contributions) Regulations 2000 (S.I. 2000/619) (“the AVC Regulations”).

Regulation 1 provides for citation, commencement and effect, including that certain provisions of this instrument are to take effect from various dates before the date of commencement. Section 12(1) of the Superannuation Act 1972 (c.11) provides authority for the regulations specified in regulation 1(3) to (4) to take effect as from a date earlier than the making of these Regulations.

The remainder of the Regulations are divided into six Parts, with Parts 2 to 5 amending the 1995 Regulations, the 2008 Regulations, the Injury Benefits Regulations and the AVC Regulations respectively, and Part 6 providing that certain persons detrimentally affected by these Regulations may elect for the provisions not to apply to them.

Parts 2 and 3 make similar amendments in respect of both the 1995 Regulations and the 2008 Regulations. They also introduce amendments specific to either the 1995 Regulations or the 2008 Regulations.

The changes dealing with similar issues in Parts 2 and 3—

introduce changes as to when a person may contribute or accrue further service in the Scheme (regulations 9, 95 to 99, 101 and 102)

clarify the way in which pensionable earnings will be determined if a member has officer service before practitioner service that was the result of a transfer-in of benefits to the Scheme (regulations 9(2)(e) and 100)

make changes in terminology to reflect the fact that there is one NHS Pension Scheme consisting of two sections (the 1995 Section and the 2008 Section) (regulations 3, 10 (and Schedule 1), 12, 13, 17, 53 and 103 (and Schedule 2).

The changes specific to Part 2, amend the provisions relating to—

entitlement to a higher tier ill-health pension where a member is a pensioner member of the 1995 Section and an active member of the 2008 Section of the Scheme (regulation 4)
the benefits to be paid following the death of a 1995 Section pensioner who is also a member of the 2008 Section (regulations 5 and 8)

The amendments in Part 2 also deal with minor technical amendments relating to pensions for surviving nominated partners (regulation 6) and for death in employment (regulation 7).

The changes specific to Part 3 are—

the amendment of the provisions relating to—

ill-health pensions (regulations 30(2) and 72(2))

circumstances in which a “host Trust or Board” is deemed to be the employer of general medical and dental practitioners and non-GP providers (regulations 13, 19 and 53)

eligibility for membership of the 2008 Section (regulation 59)

the treatment of transfer values under former schemes received by the Scheme in respect of practitioner members (regulations 89 to 92 and 100)

the introduction of the provisions relating to the “Choice Exercise” under which a 1995 Section member may opt to join the 2008 Section of the Scheme (“a 2008 Section Optant”) and the terms on which he may do so and the effect on benefits of doing so (new Chapters 2.K and 3.K inserted by regulations 52 and 94 respectively).

A number of amendments that are consequential upon the insertion of new Chapters 2.K and 3.K are also made (regulations 13 to 16, 18, 20 to 51, 54 to 58, 60 to 88 and 93).

The change made to the Injury Benefits Regulations by Part 4 updates the definition of “NHS employment” (regulation 104).

The changes made to the AVC Regulations by Part 5 are the insertion of a cross reference to the 2008 Regulations and to reflect the lump sum rule in section 166(1) of the Finance Act 2004 (regulation 105).

Part 6 provides that deferred members, or members in receipt of a relevant benefit, who are detrimentally affected by these Regulations may elect for the provisions not to apply to them by giving notice within six months of the coming into force of these Regulations (regulation 106).

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(Amendment) Regulations 2009**