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STATUTORY INSTRUMENTS

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**2010 No. 1149**

**PENSIONS**

**The Financial Assistance Scheme  
(Miscellaneous Amendments) Regulations 2010**

*Made - - - - 1st April 2010*

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 190, 203, 286, 315(2) and (4) and 318(1) of the Pensions Act 2004<sup>(1)</sup>.

In accordance with section 316(2)(n) of the Pensions Act 2004, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

**PART 1**

**Introductory**

**Citation and commencement**

1. These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 and shall come into force on the day after the day on which they are made.

**Interpretation**

2. In these Regulations—

“the FAS Appeals Regulations” means the Financial Assistance Scheme (Appeals) Regulations 2005<sup>(2)</sup>;

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(1) 2004 c.35. Section 190 is modified in its application to the financial assistance scheme by paragraph 5 of Schedule 1 to S.I. 2005/1986. Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and by section 124 of the Pensions Act 2008 (c.30). Section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993, 2005/2113 and 2008/731). Section 318(1) is cited because of the meanings given to “prescribed” and “regulations”.

(2) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683, 2009/792 and 2009/1851.

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(3);

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005(4); and

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(5).

## PART 2

### Amendment of the FAS Regulations

#### Amendment of the FAS Regulations

3. The FAS Regulations are amended in accordance with this Part.

#### Amendment of Part 1

4. In regulation 2 (interpretation)—

(a) in the definition of “annual payment”, for “regulation 17 or 17C and Schedule 2” substitute “regulation 17, 17C or 17E and Schedule 2, 3 or 4”;

(b) after the definition of “annual payment” insert—

““asset share” in respect of a person means the assets available to discharge the liability of the scheme in respect of that person as determined in accordance with regulation 22(2), or, where it applies, regulation 28(1);”;

(c) for the definition of “beneficiary” substitute—

““beneficiary” means—

(a) a qualifying member or, after that qualifying member’s death, the survivor and surviving dependants of that qualifying member; and

(b) any person entitled to a payment in accordance with regulation 17G(1);”;

(d) after the definition of “beneficiary” insert—

““calculation date” means the last day of the month in which the scheme manager instructs the trustees or managers of a qualifying pension scheme to obtain a valuation under regulation 22;”;

(e) in the definition of “ill health payment” for “Schedule 2A” substitute “Schedules 2A, 5 and 6”;

(f) in the definition of “indexation date”, before “an annual payment” insert “a payment under regulation 17G, a payment under regulation 17H,”

(g) after the definition of “multi-employer scheme” insert—

““notional pension” means the annual rate of annuity determined in accordance with regulation 27(1)(a);

“the Ombudsman” means the PPF Ombudsman or any person appointed under section 210(1) (deputy PPF Ombudsmen) to act as a deputy to the PPF Ombudsman;”;

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(3) S.I. 2005/2189 as amended by S.I. 2005/3256, 2007/3581, 2008/1903, 2009/792 and 2009/1851.

(4) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903, 2009/792 and 2009/1851.

(5) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241, 2009/792 and 2009/1851.

- (h) after the definition of “qualifying pension scheme” insert—
  - ““relevant accounts” for the purposes of identifying and valuing the assets of a scheme, means the audited accounts for the scheme which—
  - (a) show a true and fair view of—
    - (i) the financial transactions of the scheme during the period to which the accounts relate (“the accounting period”);
    - (ii) the amount and disposition of the assets at the end of the accounting period; and
    - (iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits after the end of the accounting period;
  - (b) are in such manner and form as the scheme manager may request;
  - (c) include a report by the auditor in writing as to whether or not in the auditor’s opinion the requirements in paragraphs (a) and (b) above are satisfied; and
  - (d) are prepared in respect of the period ending with the calculation date;”;
- (i) after the definition of “scheme manager” insert—
  - ““scheme rules” means the rules of the qualifying pension scheme;”;
- (j) after the definition of “survivor” insert—
  - ““survivor notional pension” means the annual rate of annuity determined in accordance with regulation 27(1)(c);”;
- (k) after the definition of “tax approved scheme” insert—
  - ““transfer notice” means the notice given under regulation 29;”;
- (l) after the definition of “trustees or managers” insert—
  - ““valuation actuary” has the meaning given in regulation 22(5);”.

#### **Amendment of regulation 4**

- 5. In regulation 4 (application of Parts 1 and 2 of the Act)—
  - (a) after paragraph (2)(bf) insert—
    - “(bg) sections 135 and 136 (provisions restricting winding up, discharge of liabilities etc and provisions regarding validation of contraventions of section 135);
    - (bh) section 161 (effect of Board assuming responsibility for a scheme);
    - (bi) section 165 (guaranteed minimum pensions);”;
  - (b) in paragraph (2)(d) omit “(except section 202)”;
  - (c) after paragraph (2)(da) insert—
    - “(db) Schedule 6 (transfer of property, rights and liabilities to the Board); and”;
  - (d) in paragraph (5) omit “201 and”.

#### **Amendment of regulation 15**

- 6. In regulation 15 (qualifying members)—
  - (a) for paragraph (1) substitute—
    - “(1) A member or a former member of a qualifying pension scheme is a qualifying member of that scheme for the purposes of—

- (a) section 286A(6) (restriction on purchase of annuities); and
- (b) these Regulations,

where the conditions in paragraphs (2) to (3A) are satisfied in relation to that member or former member or would have been satisfied in relation to that member or former member had that member or former member not died before the coming into force of these Regulations.”; and

- (b) after paragraph (3) insert—

“(3A) The condition in this paragraph is that the scheme’s pension liabilities have not been satisfied in full in respect of that member.”.

### **Omission of regulations 15A and 16**

7. Omit regulations 15A (qualifying members for the purposes of section 286A) and 16 (insufficient assets).

### **Amendment of regulation 17**

- 8. In regulation 17 (annual payments)—

- (a) in each place it occurs omit “determined in accordance with Schedule 2”;
- (b) in paragraph (1) for “Schedule 2 makes” substitute “Schedules 2, 3 and 4 make”;
- (c) in paragraph (5A) after “a beneficiary” insert “entitled to an annual payment in accordance with Schedule 2”;
- (d) after paragraph (7) add—

“(8) Subject to paragraphs (16) and (17), and until such time, if any, as regulation 17E applies, where a beneficiary is entitled to an annual payment in accordance with this regulation, that annual payment shall be determined in accordance with—

- (a) Schedule 2, where none of sub-paragraphs (b) to (k) nor paragraph (16) or (17) applies;
- (b) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the revalued notional pension in relation to the qualifying member; and
    - (bb) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1) (d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the annual payment to which that qualifying member would be entitled in accordance with Schedule 2 if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of that Schedule were omitted;

- (c) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant; and
  - (iii) the qualifying member in respect of the beneficiary was entitled to an annual payment in accordance with Schedule 3 immediately before the death of the member;
- (d) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
  - (iv) the qualifying member died—
    - (aa) before becoming entitled to an annual payment; and
    - (bb) on or after the calculation date; and
  - (v) the sum of—
    - (aa) one half of the revalued notional pension in relation to the qualifying member;
    - (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and
    - (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraphs 2(3A) to (3G) and 5(6A) of that Schedule were omitted;

- (e) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary was not receiving a present payment from the qualifying pension scheme under scheme

rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

- (iv) the qualifying member died—
  - (aa) after becoming entitled to an annual payment; and
  - (bb) on or after the calculation date,
 but before the day on which the transfer notice was given;
- (v) the sum of—
  - (aa) one half of the revalued notional pension in relation to the qualifying member;
  - (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and
  - (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraphs 2(3A) to (3G) and 5(6A) of that Schedule were omitted;

- (f) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) neither the qualifying member in respect of the beneficiary nor the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
  - (iv) the qualifying member died before the calculation date; and
  - (v) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3G) of that Schedule were omitted;

- (g) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
- (iii) the sum of—
  - (aa) the notional pension in relation to that qualifying member; and
  - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;
- (h) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (bb) died before the calculation date; and
  - (iv) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;
- (i) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant who was receiving a present payment from the qualifying pension scheme under scheme rules as a result of the death of a qualifying member before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the

survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;

- (j) Schedule 4, where—
- (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (bb) died on or after the calculation date, but before the day on which the transfer notice was given; and
  - (iv) the sum of—
    - (aa) the proportion of the notional pension which relates to the beneficiary;
    - (bb) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the date on which the qualifying member died; and
    - (cc) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the qualifying member died until the day on which the transfer notice is given,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted; or

- (k) Schedule 4, where—
- (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (bb) died on or after the day on which the transfer notice was given; and
  - (iv) the sum of—
    - (aa) the proportion of the notional pension which relates to the beneficiary;



- (bb) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice was given; and
  - (cc) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted.
- (9) For the purposes of paragraphs (8), (16) and (17)—
  - (a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations—
    - (i) the qualifying member was entitled to a payment under the scheme rules; and
    - (ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and
    - (iii) the qualifying member’s entitlement became payable, as a result of paragraphs (i) and (ii) being satisfied.
  - (b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.
- (10) In paragraph (8)(b)(iii), (d)(v) and (e)(v), “the revalued notional pension” means the aggregate of—
  - (a) the notional pension; and
  - (b) the revaluation amount for the period—
    - (i) beginning on the calculation date; and
    - (ii) ending on the earliest of—
      - (aa) the day on which the beneficiary becomes entitled to an annual payment;
      - (bb) the day on which the beneficiary began to receive a present payment from the scheme; or
      - (cc) the day on which the qualifying member died.
- (11) The revaluation amount for the period referred to in paragraph (10) is—
  - (a) where—
    - (i) that period is less than one month; or
    - (ii) the qualifying member became entitled to an annual payment or began to receive present payment from the scheme prior to the calculation date,

nil; and

(b) in any other case, the revaluation percentage of the notional pension.

(12) In paragraph (11), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10); and
- (b) the maximum revaluation rate.

(13) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10) is—

$$(100 \times (A \div B)) - 100$$

where—

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.

(14) In paragraph (12)(b), “the maximum revaluation rate” is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (12)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

(15) In paragraph (8), “relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an annual payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary is a qualifying member to whom sub-paragraph (a) does not apply, but to whom paragraph (3) or (3C) applies, the date on which the qualifying member became entitled to an annual payment under that paragraph; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(16) Where a qualifying member entitled to an annual payment in accordance with this regulation is a qualifying member to whom regulation 17H applied, the annual payment shall be determined in accordance with—

(a) Schedule 3, where—

- (i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
- (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an annual payment under this regulation is higher than the amount of the annual payment to which the qualifying

member would be entitled in accordance with Schedule 2 if that Schedule applied; and

(b) Schedule 4, where—

(i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an annual payment under this regulation is higher than the amount of the annual payment to which the member would be entitled in accordance with Schedule 2 if that Schedule applied.

(17) Where a beneficiary is entitled to an annual payment in accordance with this regulation because they are the survivor or surviving dependant of a qualifying member to whom, immediately before the qualifying member's death, regulation 17H applied, the annual payment shall be determined in accordance with—

(a) Schedule 3, where—

(i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(ii) one half of the payment which was payable to the qualifying member under Schedule 7, disregarding any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, on the day on which the qualifying member died is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 5(6A) of that Schedule were omitted; and

(b) Schedule 4, where—

(i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(ii) the relevant proportion of the payment which was payable to the qualifying member in accordance with Schedule 7, disregarding any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, on the day on which the qualifying member died is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied.

(18) In paragraph (8) and paragraph (17), “relevant proportion” means the proportion of the notional pension which relates to the beneficiary.”.

### **Amendment of regulation 17A**

**9.** In regulation 17A (ill health payments)—

(a) in paragraph (1) omit “in accordance with paragraph 2 of Schedule 2A”;

(b) in paragraph (5) after “a beneficiary” insert “entitled to an ill health payment in accordance with Schedule 2A”;

- (c) in paragraph (6B) omit “determined in accordance with Schedule 2A”;
- (d) for paragraph (8) substitute—

“(8) Subject to paragraph (16), and until such time, if any, as regulation 17F applies, where a beneficiary is entitled to an ill health payment in accordance with this regulation, that ill health payment shall be determined in accordance with—

- (a) Schedule 2A, where none of sub-paragraphs (b) to (i) nor paragraph (16) applies;
- (b) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

- (iii) the sum of—

- (aa) the product of C multiplied by the revalued notional pension in relation to the qualifying member; and

- (bb) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the ill health payment to which that qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of Schedule 2 were omitted;

- (c) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a survivor or surviving dependant; and

- (iii) the qualifying member in respect of the beneficiary was entitled to an ill health payment in accordance with Schedule 5 immediately before the death of the member;

- (d) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;

- (ii) the beneficiary is a survivor or surviving dependant;

- (iii) the qualifying member in respect of the beneficiary—

- (aa) was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

- (bb) was entitled to an ill health payment immediately before the death of the qualifying member; and

- (cc) died on or after the calculation date and before the day on which the transfer notice was given; and

(iv) the sum of—

- (aa) the product of C multiplied by one half of the revalued notional pension in relation to the qualifying member;
- (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and
- (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the ill health payment to which a survivor would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(2A) of that Schedule and paragraph 2(3A) to (3G) of Schedule 2 were omitted;

(e) Schedule 5, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;
- (ii) the beneficiary is a survivor or surviving dependant;
- (iii) neither the beneficiary nor the qualifying member in respect of the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
- (iv) the beneficiary was entitled to an ill health payment immediately before the calculation date; and
- (v) the sum of—
  - (aa) the survivor notional pension determined in respect of the beneficiary; and
  - (bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of Schedule 2 were omitted;

(f) Schedule 6, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme;
- (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(iii) the sum of—

- (aa) the notional pension in relation to that qualifying member; and
- (bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted;

(g) Schedule 6, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) either—

- (aa) the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules as a result of the death of a qualifying member; or
- (bb) the qualifying member in respect of the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules,

before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

(iv) the beneficiary was entitled to an ill health payment immediately before the calculation date; and

(v) the sum of—

- (aa) the survivor notional pension determined in respect of the beneficiary; and
- (bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted;

(h) Schedule 6, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) the qualifying member in respect of the beneficiary—

- (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
- (bb) died on or after the calculation date, but before the day on which the transfer notice was given; and

- (cc) was entitled to an ill health payment when the qualifying member died; and
  - (iv) the sum of—
    - (aa) the proportion of the notional pension which relates to the beneficiary;
    - (bb) the relevant proportion of the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the date on which the qualifying member died; and
    - (cc) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted; and
  - (i) Schedule 6, where—
    - (i) a transfer notice has been given in respect of the qualifying pension scheme;
    - (ii) the beneficiary is a survivor or surviving dependant;
    - (iii) the qualifying member in respect of the beneficiary—
      - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
      - (bb) died on or after the day on which the transfer notice was given; and
      - (cc) was entitled to an ill health payment when the qualifying member died; and
    - (iv) the sum of—
      - (aa) the proportion of the notional pension which relates to the beneficiary;
      - (bb) the relevant proportion of the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice was given; and
      - (cc) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted.
- (9) For the purposes of paragraphs (8) and (16)—
  - (a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance

Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations—

- (i) the qualifying member was entitled to a payment under the scheme rules;
  - (ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and
  - (iii) the qualifying member’s entitlement became payable, as a result of paragraphs (i) and (ii) being satisfied; and
- (b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.

(10) In paragraph (8)(b)(iii) and (d)(iv)—

“the revalued notional pension” means the aggregate of—

- (a) the notional pension; and
- (b) the revaluation amount for the period—
  - (i) beginning on the calculation date; and
  - (ii) ending on the earlier of—
    - (aa) the day on which the qualifying member became entitled to an ill health payment; and
    - (bb) the day on which the qualifying member began to receive a present payment from the scheme; and

“C” means—

- (a) 1, where the qualifying member was—
  - (i) entitled to an ill health payment on the calculation date; or
  - (ii) receiving a present payment from the scheme on the calculation date; and
- (b) the actuarial factor to be applied in respect of the beneficiary in accordance with Schedule 5, where the qualifying member was not receiving a present payment from the scheme on the calculation date and became entitled to an ill health payment after the calculation date.

(11) The revaluation amount for the period referred to in the definition of “the revalued notional pension” in paragraph (10) is—

- (a) where—
  - (i) that period is less than one month; or
  - (ii) the qualifying member became entitled to an ill health payment or began to receive a present payment from the scheme prior to the calculation date, nil; or
- (b) in any other case, the revaluation percentage of the notional pension.

(12) In paragraph (11), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10); and
- (b) the maximum revaluation rate.



(13) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (10) is—

$$(100 \times (A \div B)) - 100$$

where—

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the day from which the qualifying member became entitled to an ill health payment or, as the case may be, began to receive a present payment from the scheme falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.

(14) In paragraph (12)(b), “the maximum revaluation rate” is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (12)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

(15) In paragraph (8), “relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an ill health payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary became entitled to an ill health payment after the calculation date and prior to receiving a payment from the scheme, the date on which the beneficiary became so entitled; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(16) Where a qualifying member entitled to an ill health payment in accordance with this regulation is a qualifying member to whom regulation 17H applied, the ill health payment shall be determined in accordance with—

(a) Schedule 5, where—

- (i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
- (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an ill health payment under this regulation is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied; and

(b) Schedule 6, where—

- (i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into

force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

- (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an ill health payment under this regulation is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied.”.

### **Amendment of Part 5**

**10.**—(1) After regulation 17C (annual payments for certain applications in cases of severe ill health) insert—

#### **“Lump sum payments**

**17D.**—(1) This regulation applies where the qualifying member—

- (a) is a qualifying member to whom Part 7 applies;
- (b) is a qualifying member of a qualifying pension scheme in respect of which a transfer notice has been given;
- (c) is not regarded as a qualifying member by virtue of regulation 15(5);
- (d) was not receiving a present payment under scheme rules before the day on which the transfer notice was given;
- (e) has made a written request to commute for a lump sum a portion of the annual payment or ill health payment to which that qualifying member is entitled no later than—
  - (i) the day before the day on which the qualifying member becomes entitled to an annual payment or ill health payment; or
  - (ii) such later day by which the scheme manager may determine that it will accept a written request in the case of any particular member; and
- (f) the notional pension determined for the qualifying member is more than nil.

(2) Where this regulation applies a qualifying member shall be entitled to commute for a lump sum a portion of the payments payable or which may become payable to and in respect of that qualifying member under these Regulations—

- (a) subject to sub-paragraph (b), immediately before the day on which that member becomes entitled to an annual payment or ill health payment in accordance with these Regulations; or
- (b) where paragraph (1)(e)(ii) applies, at any point prior to the date determined by the scheme manager under that paragraph.

(3) The portion commuted for a lump sum under paragraph (2) shall not exceed the revalued notional pension as construed in accordance with regulation 17(10) or, where the qualifying member is entitled to an ill health payment, regulation 17A(10).

(4) The lump sum payable under paragraph (2) is the actuarial equivalent of the commuted portion of payments to be made in respect of the qualifying member in accordance with these Regulations and shall not exceed 25% of the sum of—

- (a) the product of 20 multiplied by the amount of the annual payment or ill health payment after commutation; and

(b) the lump sum derived from the portion commuted.

(5) The scheme manager shall only be bound to make a determination in relation to the amount of an annual payment or an ill health payment payable after the time within which the qualifying member may make a written request for a lump sum in accordance with paragraph (1)(e) has expired.

#### **Redetermination of an annual payment previously determined in accordance with Schedule 4**

**17E.**—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an annual payment determined in accordance with Schedule 4, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

(2) The amounts in this paragraph are—

- (a) the amount of the annual payment determined in accordance with Schedule 4; and
- (b) the amount of any annual increases to which the beneficiary was entitled on the indexation date in accordance with paragraph 7 of Schedule 4.

(3) The amounts in this paragraph are—

- (a) the amount of an annual payment which would be determined in accordance with Schedule 2 in respect of the beneficiary; and
- (b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2,

if the beneficiary were entitled to an annual payment determined in accordance with Schedule 2.

(4) Where this regulation applies—

- (a) the scheme manager shall redetermine the amount of the annual payment; and
- (b) the beneficiary shall, from the indexation date—
  - (i) be entitled to an annual payment determined in accordance with Schedule 2; and
  - (ii) cease to be entitled to an annual payment determined in accordance with Schedule 4.

#### **Redetermination of an ill health payment previously determined in accordance with Schedule 6**

**17F.**—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an ill health payment determined in accordance with Schedule 6, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

(2) The amounts in this paragraph are—

- (a) the amount of the ill health payment determined in accordance with Schedule 6; and
- (b) the amount of any annual increases to which the beneficiary was entitled on the indexation date in accordance with paragraph 7 of Schedule 6.

(3) The amounts in this paragraph are—

- (a) the amount of an ill health payment which would be determined in accordance with Schedule 2A in respect of the beneficiary; and

(b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2A,  
if the beneficiary were entitled to an ill health payment determined in accordance with Schedule 2A.

(4) Where this regulation applies—

- (a) the scheme manager shall redetermine the amount of the ill health payment; and
- (b) the beneficiary shall, from the indexation date—
  - (i) be entitled to an ill health payment determined in accordance with Schedule 2A; and
  - (ii) cease to be entitled to an ill health payment determined in accordance with Schedule 6.

### **Payments to beneficiaries other than qualifying members, survivors and surviving dependants**

**17G.**—(1) This regulation applies where—

- (a) a notional pension has been determined in accordance with regulation 27 in respect of a person who—
    - (i) is not a qualifying member, a survivor or surviving dependant; but
    - (ii) is a person in respect of whom the qualifying pension scheme—
      - (aa) as a result of the death of a qualifying member, had a liability to provide a pension or other benefit at the calculation date; and
      - (bb) would have continued to have a liability to provide that pension or other benefit had the trustees or managers not been discharged from that liability under section 161 (as modified by Schedule 1 to these Regulations); and
  - (b) a transfer notice has been given in respect of the qualifying pension scheme.
- (2) Where this regulation applies, that person shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 7.
- (3) A person entitled to a payment under paragraph (2) shall be entitled to that payment—
- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is given; and
  - (b) until the day on which entitlement to a payment from the scheme would have ended in accordance with scheme rules.
- (4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the person by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.
- (5) Where a person ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—
- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to that person, in respect of that year, cease to be payable; and
  - (b) any instalment of such a payment which is payable in respect of a period which includes the day on which the person has died or otherwise ceased to be entitled to a payment shall be payable.

**Payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment**

**17H.**—(1) This regulation applies where—

- (a) a transfer notice has been given in respect of a qualifying pension scheme;
- (b) a qualifying member is not entitled to an annual payment or an ill health payment; and
- (c) that qualifying member was receiving present payment of a pension under the scheme rules on the day on which the transfer notice is given.

(2) Where this regulation applies, the qualifying member shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 7.

(3) A qualifying member entitled to a payment under paragraph (2) shall be entitled to that payment—

- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is given; and
- (b) until the earlier of—
  - (i) the day before the day on which the qualifying member becomes entitled to an annual payment or an ill health payment; and
  - (ii) the day on which the qualifying member dies.

(4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the qualifying member by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(5) Where the qualifying member ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—

- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to the qualifying member, in respect of that year, cease to be payable; and
- (b) where the member dies before becoming entitled to an annual payment or ill health payment, any instalment of such a payment which is payable in respect of a period which includes the day on which the qualifying member died shall be payable.”.

**Insertion of regulation 18A**

**11.** After regulation 18 insert—

**“Death benefit guarantees**

**18A.**—(1) This regulation applies where—

- (a) a qualifying member was entitled to an annual payment determined in accordance with Schedule 4 or 6;
- (b) under scheme rules, an amount was payable as a result of the qualifying member dying within a period specified in the scheme rules; and
- (c) the qualifying member dies within the period specified.

(2) Where this regulation applies, the scheme manager shall pay the amount payable—

- (a) to such person or persons specified in the scheme rules;

- (b) where no person is specified in the scheme rules, but the qualifying member has made a valid nomination in accordance with those rules, to such person or such persons nominated by the qualifying member; or
  - (c) where neither sub-paragraph (a) nor (b) applies—
    - (i) to any survivor; or
    - (ii) if there is no survivor, to any surviving dependant; or
    - (iii) if there is no survivor or surviving dependant, to the estate of the qualifying member.
- (3) In any case where the scheme manager is required under paragraph (2) to make a payment in respect of the qualifying member to more than one person, the amount payable shall be divided between the beneficiaries—
- (a) where paragraph (2)(a) or (b) applies and the scheme rules make provision for how the amount is to be divided, in accordance with scheme rules; and
  - (b) in all other cases, equally.
- (4) Where a payment to be made under this regulation would, but for this paragraph, include a fraction of a penny, that fraction shall be disregarded if it is less than half a penny and shall otherwise be treated as a penny.
- (5) Payments made under this regulation shall be made by means of direct credit transfer or by such other means as appear to the scheme manager to be appropriate in the circumstances of any particular case.”.

#### **Amendment of regulation 19**

- 12.** In regulation 19 (time and manner of payment: general provisions)—
- (a) in paragraph (1), after “ill health payment” insert “, a payment under regulation 17G or 17H”; and
  - (b) in paragraph (3) after sub-paragraph (d) insert—
    - “(e) the beneficiary becomes entitled to a payment under regulation 17G or 17H;”.

#### **Amendment of regulation 20**

- 13.** In regulation 20(1) before “instalments” insert “payments under regulation 18A and”.

#### **Insertion of Parts 7 to 9**

**14.** After Part 6 (administration of payments), insert Parts 7 (valuation of assets and liabilities), 8 (scheme manager functions after a valuation) and 9 (miscellaneous payments and residual assets) as set out in Schedule 1 to these Regulations.

#### **Amendment of Schedule 1**

- 15.** In Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act)—
- (a) in paragraph 3A—
    - (i) after sub-paragraph (b) insert—
      - “(ba) in subsection (2), after paragraph (b) insert—
      - “(ba) the determination of interim pensions,”;”;
    - (ii) after sub-paragraph (c) insert—

“(ca) in subsection (3), before paragraph (a) insert—

“(za) “interim pension” has the meaning given by regulations under section 286(1),”,;”.

(b) after paragraph 3A insert—

**“3B.** In section 135 (restrictions on winding up, discharge of liabilities etc)—

(a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2)”;

(b) omit subsections (2), (3), (5) to (7) and (11);

(c) in subsection (4)—

(i) for the words before paragraph (a) substitute “Except where subsection (4A) applies—

(ii) in paragraph (a), for “member’s” substitute “qualifying member’s”; and

(iii) for paragraph (b) substitute—

“(b) no steps may be taken to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment which would be—

(i) a winding-up lump sum under paragraph 10 of Schedule 29 to the Finance Act 2004 (c.12); or

(ii) a trivial commutation lump sum under paragraph 7 or 7A of that Schedule.”;

(d) after subsection (4) insert—

“(4A) This subsection applies where—

(a) before 26th September 2007 the trustees or managers entered into a binding commitment to purchase an annuity for the qualifying member;

(b) the purchase of an annuity has been approved by the scheme manager under section 286A(2)(b);

(c) the transfer or discharge of liability has been approved by the scheme manager under subsection (4C) on the application of the trustees or managers of the scheme and any condition imposed under subsection (4D) is satisfied;

(d) before the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force, the trustees or managers of the scheme offered a trivial commutation lump sum to the qualifying member;

(e) before the date on which those Regulations came into force—

(i) an application under section 93A of the Pension Schemes Act 1993(7) or section 89A of the Pension Schemes (Northern Ireland) Act 1993(8) (salary related schemes: right to statement of entitlement) for a statement of entitlement had been received

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(7) 1993 c.48.

(8) 1993 c.49.

- by the trustees or managers of the scheme for the qualifying member;
- (ii) the trustees or managers of the scheme have provided the qualifying member with such a statement; and
  - (iii) the qualifying member has made, within the relevant period, and not withdrawn, an application under section 95 of the Pension Schemes Act 1993 or section 91 of the Pension Schemes (Northern Ireland) Act 1993 (ways of taking right to cash equivalent);
- (f) the transfer or discharge of liability relates only to money purchase benefits; or
  - (g) the transfer or discharge of liability relates only to benefits derived from the payment of voluntary contributions.
- (4B) For the purposes of subsection (4A)(e), “the relevant period” means—
- (a) where section 94(1)(aa) of the Pension Schemes Act 1993 or section 90(1)(aa) of the Pension Schemes (Northern Ireland) Act 1993 (right to cash equivalent) applies, three months beginning with the guarantee date, as defined in those Acts, in respect of the statement of entitlement; or
  - (b) where regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(9)</sup> or regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(10)</sup> (extension of time within which a member may exercise option to take a guaranteed cash equivalent) applies, the three month period for making a relevant application determined in accordance with that regulation.
- (4C) The scheme manager may approve a transfer referred to in subsection (4)(a) or any steps to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment referred to in subsection (4)(b) if the scheme manager thinks it appropriate to do so.
- (4D) An approval under subsection (4C) may be made subject to such conditions (if any) as the scheme manager thinks appropriate.”; and
- (e) in subsection (9) for “Board” substitute “scheme manager”.
- 3C.** In section 136 (power to validate contraventions of section 135)—
- (a) in each place it occurs, for “Board” substitute “scheme manager”;
  - (b) in subsection (1) for the words “to do so is consistent” to the end, substitute “it is appropriate to do so”;
  - (c) in subsection (2) omit paragraphs (a), (c) and (d);
  - (d) after subsection (2) insert—
    - “(2A) The scheme manager may copy the notice under subsection (2) to any other person to whom, in the opinion of the scheme manager, the determination is relevant.”;
  - (e) in subsection (3) for “Board’s” substitute “scheme manager’s”; and

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<sup>(9)</sup> S.I. 1996/1847.

<sup>(10)</sup> S.R. 1996 No. 619.



(f) omit subsections (4) and (5).

**3D.** In section 161 (effect of Board assuming responsibility for a scheme)—

(a) in subsection (1)—

(i) after “given” insert “under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”;

(ii) for “an eligible scheme” substitute “a qualifying pension scheme under section 286(2)”;

(iii) for the words from “the Board” to the end substitute—

“(a) the property, rights and liabilities of the scheme are transferred to the Secretary of State, without further assurance, with effect from the time the trustees or managers are given the transfer notice,

(b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and

(c) any liabilities other than those transferred under paragraph (a) or liabilities in respect of money purchase benefits referred to in subsection (4A) are discharged.”;

(b) omit subsection (2);

(c) in subsection (3)—

(i) after “liabilities of the scheme” insert “means any liabilities which are liabilities of the scheme as a direct result of the rights or property referred to in subsection (1)(a) being held by or vested in the trustees or managers of the scheme, but”;

(ii) omit the words from “, other than” to the end;

(d) in subsection (4)—

(i) after the words in brackets insert “which are not pensions or benefits in respect of money purchase benefits referred to in subsection (4A)”;

(ii) omit paragraph (b) and the “and” which precedes it;

(e) after subsection (4) insert—

“(4A) Subsection (1)(a) does not transfer any property which is, or rights which are, held by or vested in the trustees or managers of the scheme in respect of money purchase benefits where the scheme manager is satisfied that appropriate arrangements have been made or are being made for the discharge of the scheme’s liabilities relating to money purchase benefits.

(4B) The trustees or managers of the scheme may discharge their liabilities in respect of money purchase benefits irrespective of any rules of the scheme which may provide that such liabilities must be discharged together with benefits which are not money purchase benefits.”;

(f) in subsection (7) for “Board” substitute—

(i) where it first occurs, “scheme manager”;

(ii) for the subsequent occurrences, “Secretary of State”;

(g) after subsection (7) insert—

“(7A) Neither paragraph (b) nor (c) of subsection (1) affects any rights transferred to the Secretary of State in accordance with paragraph (a) of that subsection.”;

(h) in each place it occurs, for “subsection (2)” substitute “subsection (1)”.

**3E.** In section 165 (guaranteed minimum pensions)—

(a) in subsection (1)—

- (i) for “Board” substitute “scheme manager”;
- (ii) for “Commissioners of Inland Revenue” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
- (iii) for “it assuming responsibility for an eligible scheme in accordance with this Chapter” substitute “the scheme manager giving a transfer notice under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”; and

(b) after subsection (3) insert—

“(4) In subsection (8) of that section (as inserted by subsection (3) above) for “on the Board of the Pension Protection Fund assuming responsibility for the scheme” substitute “when a transfer notice was given under regulation 29 of the Financial Assistance Scheme Regulations 2005”.”;

(c) after paragraph 14 insert—

**“14A.** In section 202 (tax information)—

- (a) in each place it occurs, for “the Board” substitute “the scheme manager”;
- (b) in subsection (1) for “tax functions” substitute “a function of the Revenue and Customs”;
- (c) in subsection (2) for “section 182 of the Finance Act 1989 (c.26)” substitute “sections 18 and 19 of the Commissioners for Revenue and Customs Act 2005 (c.11)”;
- (d) in subsection (4) for “Commissioners of Inland Revenue or the Commissioners of Customs and Excise” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
- (e) for subsection (5) substitute—

“(5) In subsection (1), “a function of the Revenue and Customs” has the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005.”;

(d) in paragraph 17—

(i) in sub-paragraph (a)—

(aa) before inserted sub-paragraph (ga) insert—

“(zga) Paragraphs 6A, 7(1) and 8 of Schedule 6 (transfer of property, rights and liabilities to the Board) as modified;”;

(bb) for “Schedules 2 and 2A” substitute “Schedules 2 to 7”; and

(cc) after “Financial Assistance Scheme (Appeals) Regulations 2005;” insert—

“(gg) regulation 27 of the 2005 Regulations (scheme manager calculations after a valuation);

(gh) regulation 28 of the 2005 Regulations (determination of certain asset shares, notional pensions and survivor notional pensions);

(gi) regulation 31 of the 2005 Regulations (payments where amounts relating to money purchase benefits are transferred to the Secretary of State);”;

- (ii) in sub-paragraph (b) for “(gf)” substitute “(gi)”; and
- (e) after paragraph 18 add—
- “19. In Schedule 6 (transfer of property, rights and liabilities to the Board)—
- (a) after paragraph 3(2) insert—
- “(3) Where any liabilities in respect of an existing or future cause of action are not transferred as a result of sub-paragraph (2), the trustees or managers are not discharged from any obligations in respect of such causes of action.”;
- (b) after paragraph 5 insert—
- “5A. Any contract which does not form part of any rights or liabilities transferred to the Secretary of State shall be treated as terminated.”;
- (c) in paragraph 6 for the words from “so far as necessary” to the end substitute—
- “(a) so far as necessary for the purposes of giving effect to the transfer as a reference to the Secretary of State, and
- (b) so far as necessary for the purposes of giving effect to paragraph 6A(1) as a reference to the scheme manager.”;
- (d) after paragraph 6 insert—
- “6A.—(1) The rights, powers and obligations of the Secretary of State in relation to the property, rights and liabilities are exercisable by the scheme manager without limitation.
- (2) Where, by virtue of sub-paragraph (1), any amount becomes payable, or is to be paid, to the scheme manager, that amount must be paid to the Secretary of State.”;
- (e) in paragraph 7(1) in the first place in which it occurs for “Board” substitute “scheme manager”;
- (f) in all other places in which it occurs for “Board” substitute “Secretary of State”; and
- (g) after paragraph 7 add—
- “8.—(1) Where, by virtue of paragraph 3(1), an application to the Pensions Ombudsman under Part 10 of the Pension Schemes Act 1993 (c.48) or Part 10 of the Pension Schemes (Northern Ireland) Act 1993 (c.49) is to be continued by or against the Secretary of State, any reference in section 146 of the Pension Schemes Act 1993 or section 142 of the Pension Schemes (Northern Ireland) Act 1993 to the trustees or managers of an occupational pension scheme shall have effect, so far as necessary, for the purpose of giving effect to paragraph 3(1), as a reference to the Secretary of State.
- (2) Where, as a result of such an application being continued against the Secretary of State, a direction is given by the Ombudsman under section 151 of the Pension Schemes Act 1993 or section 147 of the Pension Schemes (Northern Ireland) Act 1993, the Secretary of State may require the scheme manager to carry out a review under regulation 10 of the Financial Assistance Scheme (Internal Review) Regulations 2005.”.”.

## **Amendment of Schedule 2**

16. In Schedule 2 (determination of annual and initial payments)—

- (a) in paragraph 1(2)—
- (i) omit the definition of “scheme rules”; and
  - (ii) at the end, insert—
    - ““revalued notional pension” shall be construed in accordance with regulation 17(10).”;
- (b) in paragraph 2—
- (i) in sub-paragraph (1) for “sub-paragraphs (3), (3A) and (4)” substitute “sub-paragraphs (3) to (4)”;
  - (ii) after sub-paragraph (1) insert—
    - “(1A) For the purposes of sub-paragraph (1), where a transfer notice has been given in respect of a qualifying pension scheme, no assets which are transferred to the Secretary of State shall be treated as being available to discharge the liability in respect of any qualifying member of that scheme from the day on which the transfer notice is given.”; and
  - (iii) after sub-paragraph (3A) insert—
    - “(3B) Sub-paragraph (3D) applies where the scheme manager is satisfied that the sum of interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (3C) is higher or lower than the sum of—
      - (a) the revalued notional pension or survivor notional pension; and
      - (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
        - (i) the determination under regulation 27(1)(d);
        - (ii) the revaluation amount determined in accordance with regulation 17(11); and
        - (iii) the proportion of that year which falls after the 1st January.
    - (3C) For the purposes of sub-paragraph (3B), the period is the period from—
      - (a) the earlier of—
        - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
        - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
      - (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),
 until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.
    - (3D) Where this sub-paragraph applies, the scheme manager may—
      - (a) determine how the actual pension is to be calculated, having regard to—
        - (i) the amount of interim pension which was paid to the beneficiary;
        - (ii) the amount of the sum of—
          - (aa) the revalued notional pension or survivor notional pension;
          - and

- (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the day on which the transfer notice is given; and
  - (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (3B)(a) and (b), make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
- (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant.

(3E) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before the day on which a transfer notice is given, an amount to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the actual pension is to be calculated, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3F) Where the beneficiary is a qualifying member who has received a payment in accordance with regulation 17H (payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment), or the survivor or surviving dependant of such a qualifying member, the scheme manager may determine how the actual pension is to be calculated, having regard to—

- (a) the amount paid under regulation 17H;
- (b) any interim pension paid by the scheme from the day on which the scheme began to be wound up until the day on which a transfer notice was given; and
- (c) such other matters as the scheme manager considers relevant.

(3G) Where the beneficiary is a qualifying member to whom regulation 17D applies or a survivor or surviving dependant of such a qualifying member, the scheme manager may determine how the actual pension is to be calculated, having regard to any lump sum paid and determined in accordance with that regulation.

(3H) Where the beneficiary is—

- (a) a qualifying member to whom regulation 17H applied whose payment under Schedule 7 had been reduced under paragraph 1(2) or (5) of that Schedule; or

- (b) a beneficiary who was entitled to an annual payment determined in accordance with Schedule 4 whose payment under that Schedule has been reduced under paragraph 1(2) or (5),

the scheme manager shall include the amount by which the payment has been reduced when determining the actual pension.

(3I) Sub-paragraph (3J) applies where—

- (a) a qualifying member to whom Part 7 applies has received a payment from the scheme before becoming entitled to an annual payment;
- (b) a transfer notice has been given in respect of the qualifying pension scheme; and
- (c) the qualifying member became entitled to an annual payment prior to the day on which the transfer notice was given.

(3J) Where this sub-paragraph applies, the scheme manager may determine how the actual pension is to be calculated, having regard to—

- (a) any interim pension paid by the scheme from the day on which the scheme began to be wound up until the day on which the transfer notice was given; and
- (b) such other matters as the scheme manager considers relevant.

(3K) Where—

- (a) the beneficiary is a qualifying member or the survivor or surviving dependant of a qualifying member to whom part 7 applies;
- (b) the qualifying member has commuted for a lump sum a portion of the benefits deriving from the scheme after the day on which the scheme began to be wound up; and
- (c) a transfer notice has been given in respect of the scheme,

the scheme manager may determine how the actual pension is to be calculated having regard to any lump sum paid as a result of the commutation.”;

(c) in paragraph 3—

- (i) at the beginning of sub-paragraph (3)(b) insert “except where paragraph (c) applies,”;

(ii) after sub-paragraph (3)(b) insert—

“; or

(c) where the qualifying member attains normal retirement age after 14th May 2004, the aggregate of—

- (i) the annual rate of pension which was or should have been in payment to the qualifying member in accordance with scheme rules in respect of rights accrued in a qualifying pension scheme as at the day on which the qualifying pension scheme began to be wound up; and
- (ii) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the day on which the qualifying member attains normal retirement age.”;

(iii) in sub-paragraph (3A)—

- (aa) after “sub-paragraph (3)(b)(ii)” insert “and (c)(ii)”;

- (bb) after “sub-paragraph (3)(b)(i)” insert “or, as the case may be, sub-paragraph (3)(c)(i)”;
- (iv) in sub-paragraph (3B) after “sub-paragraph (3)(b)(ii)” insert “and (c)(ii)”;
- (v) after sub-paragraph (3C) insert—
- “3ZD) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (3)(c)(ii) is—
- $$(100 \times (A \div B)) - 100$$
- where—
- A is the level of the retail prices index for the month which falls two months before the month during which the qualifying member attains normal retirement age; and
- B is the level of the retail prices index for the month which falls two months before the month during which the relevant qualifying pension scheme began to be wound up.”;
- (d) in paragraph 4—
- (i) in sub-paragraph (3), after “sub-paragraphs (3A) and (4)” insert “and paragraphs 4A and 4B;” and
- (ii) in sub-paragraph (6)(b), after “Chapter 2 of Part 4 of the 1993 Act” insert “or, where scheme rules are more favourable, in accordance with scheme rules”;
- (e) in paragraph 4A—
- (i) for sub-paragraph (1)(b) substitute—
- “ (b) either—
- (i) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which the amount referred to in sub-paragraph (1) (a) would have ceased to be payable under the scheme rules; or
- (ii) a notional pension has been determined in respect of the beneficiary which includes an amount in respect of an amount which under scheme rules would be payable for a period which is shorter than the period in respect of which the remainder of the pension would be payable.”; and
- (ii) in sub-paragraph (3)(a) after “paragraph 3(3)(a)” insert “and (c)”;
- (f) in paragraph 5—
- (i) in sub-paragraph (1)(c)(i) omit “determined in accordance with this Schedule”;
- (ii) for the formula in sub-paragraph (3) substitute—
- $$\frac{\text{expected pension} \times 0.9}{2} + H - A;$$
- (iii) in sub-paragraph (6B) for the definition of H substitute—
- ““H” means the aggregate of—
- (a) one half of the amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died; and

- (b) where sub-paragraph (6C) applies, the total amount of annual increases determined in accordance with paragraph 9 to which any survivor was entitled on the day on which the survivor died.”;
- (iv) for sub-paragraph (7)(d) substitute—
- “(d) in any case where—
- (i) 14th May 2004 is later than—
- (aa) the day on which the qualifying member died; and
- (bb) the day on which the qualifying pension scheme began to be wound up; or
- (ii) the qualifying member attained normal retirement age before 14th May 2004 but died on or after 14th May 2004, the revaluation amount for the third survivor period (see sub-paragraphs (12) and (13)).”;
- and
- (v) in sub-paragraph (12)(a) for “the day after the day on which the qualifying member died” substitute “the day after the day determined in accordance with sub-paragraph (10)(b)”;
- (g) for paragraph 5B substitute—

“**5B.**—(1) The annual payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an annual payment is also payable to a survivor of the qualifying member and—

- (a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{0.5 \times Q}{2} + D - B;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{(0.5 \times Q) + D - B}{N}.$$

(3) Where the qualifying member does not have a survivor and—

- (a) there is only one surviving dependant, the amount of annual payment shall be—

$$\frac{Q}{2} + D + S - B;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{Q + S + D - B}{N}.$$

(4) Where—



- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor by virtue of regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009(11), dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes entitled to an annual payment as a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

(5) In this paragraph—

“B” means—

- (a) where there is only one surviving dependant, the surviving dependant’s actual pension; or
- (b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of that qualifying member;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where sub-paragraph (4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3)(a), nil; and
- (c) in all other cases, nil;

“N” means the number of surviving dependants of the qualifying member;

“Q” means the sum of—

- (a) the product of 0.9 multiplied by the expected pension which has been or could have been determined in accordance with paragraph 5(4); and
- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died;

“S” means—

- (a) where sub-paragraph (4)(a) applies and, as a result the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3), the total amount of annual increases to which the survivor was entitled on the day on which the survivor died; and
- (b) in all other cases, nil.”;

(h) in paragraph 9(2), in the definition of “W”, omit the words “the day before”; and

(i) in paragraph 10(e)(ii), in the substituted sub-paragraph (4)—

- “(i) in paragraph (a)(ii), for “paragraph 4(3)”, substitute “sub-paragraph (7)”; and
- (ii) in paragraph (b), omit the words “the day before”.

### Amendment of Schedule 2A

17. In Schedule 2A (determination of ill health and interim ill health payments)—

(a) in paragraph 2—

(i) for the formula in sub-paragraph (2), substitute—

$$\frac{Q}{2} + S - B;$$

(ii) for the formula in sub-paragraph (2A), substitute—

$$\frac{(0.5 \times Q) + S - B}{N};$$

and

(iii) in sub-paragraph (3)—

(aa) omit the definitions of “D”, “E” and “H”; and

(bb) after the definition of “N” insert—

““Q” means the sum of—

- (a) the product of C multiplied by A multiplied by 0.9; and
- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died;

“S” means—

- (a) where sub-paragraph (2B) applies, the total amount of any annual increases to which any survivor was entitled on the day on which the survivor died; and
- (b) in all other cases, nil.”;

(b) for paragraph 2A, substitute—

“2A.—(1) The amount of an ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an ill health payment is also payable to a survivor of the qualifying member and—

(a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{0.5 \times Q}{2} + D - B;$$

(b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(0.5 \times Q) + D - B}{N}.$$

(3) Where the qualifying member does not have a survivor and—

(a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$(0.5 \times Q) + D + S - B;$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{Q + S + D - B}{N}$$

- (4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor by virtue of regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member,

the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

- (5) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

- (a) the qualifying member were entitled to an annual payment; and
- (b) the modifications in paragraph 6 applied;

“B” means—

- (a) where there is only one surviving dependant, the actual pension of that surviving dependant which would be determined in accordance with Schedule 2 if—

- (i) the surviving dependant were entitled to an annual payment; and
- (ii) the modifications in paragraph 6 applied;

- (b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of the qualifying member which would be determined in accordance with Schedule 2 if—

- (i) the surviving dependants were entitled to annual payments; and
- (ii) the modifications in paragraph 6 applied;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where sub-paragraph (4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3)(a), nil; and
- (c) in all other cases, nil;

“N” means the number of surviving dependants of the qualifying member;

“Q” means the sum of—

- (a) the product of C multiplied by A multiplied by 0.9; and

- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died; and
- “S” means—
- (a) where sub-paragraph (4)(a) applies and, as a result the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3), the total amount of annual increases to which the survivor was entitled on the day on which the survivor died; and
  - (b) in all other cases, nil.”;
- (c) in paragraph 3(3), in the definition of “H” for “before” substitute “on”;
  - (d) in paragraph 3A(4)—
    - (i) after paragraph (a), omit “or”;
    - (ii) after paragraph (b), insert—
      - “; or
      - (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member.”; and
      - (iii) for “the survivor died or the person ceased to be a surviving dependant” substitute “the event referred to in paragraphs (a) to (c) occurred”;
  - (e) in paragraph 3A(5), in the definition of “H” for “before” substitute “on”;
  - (f) in paragraph 5, for “paragraphs 2 and 3” substitute “paragraphs 2 to 3A”;
  - (g) in paragraph 6—
    - (i) before sub-paragraph (za) insert—
      - “(zza) in paragraph 1(2), in the definition of “revalued notional pension” for “regulation 17(10)” substitute “regulation 17A(10);” and
    - (ii) after sub-paragraph (za) insert—
      - “(zab) in paragraph 2(3H)(b), for “Schedule 4”, substitute “Schedule 6”;
      - (zac) in paragraph 3(3) and (3ZD), for “attains normal retirement age” substitute “becomes entitled to an ill health payment.”;
  - (h) in paragraph 9(2), in the definition of “W” omit the words “the day before”; and
  - (i) in paragraph 11, for sub-paragraph (1)(b) substitute—
    - “(b) either—
      - (i) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme; or
      - (ii) a notional pension has been determined in respect of the beneficiary which includes an amount in respect of an amount which under scheme rules would be payable for a period which is shorter than the period in respect of which the remainder of the pension would be payable.”.

### **Insertion of Schedules 3 to 7**

- 18.** After Schedule 2A (determination of ill health and interim ill health payments) add—
  - (a) Schedule 3 (determination of certain annual payments);

- (b) Schedule 4 (determination of annual payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010);
  - (c) Schedule 5 (determination of certain ill health payments);
  - (d) Schedule 6 (determination of ill health payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010); and
  - (e) Schedule 7 (determination of payments to early retirees and other beneficiaries),
- as set out in Schedule 2 to these Regulations.

## PART 3

### Amendment of the FAS Information and Payments Regulations

#### **Amendment of the FAS Information and Payments Regulations**

**19.**—(1) The FAS Information and Payments Regulations are amended in accordance with this regulation.

(2) At the beginning of paragraph 1(2) of Schedule 1 (information to be provided by appropriate persons) insert “Subject to sub-paragraph (2A),”.

(3) In the table in paragraph 1(2) of Schedule 1—

(a) in the first column of the seventh to eleventh items insert the words “The scheme manager”;

(b) after the eleventh item insert a twelfth item containing—

(i) in the first column, the words “The scheme manager”;

(ii) in the second column, the words—

“Details of—

(a) the assets of the qualifying pension scheme (including any assets representing the value of any rights in respect of money purchase benefits under scheme rules) including the value of those assets;

(b) the amount of any debt due from the employer under section 75 of the Pensions Act 1995 or Article 75 of the Pensions (Northern Ireland) Order 1995;

(c) the amount of any significant debt due to the scheme which is not a debt within paragraph (b);

(d) any amounts due to the trustees or managers of the scheme following the issue of a contribution notice under section 38, 47 or 55 of the Act or Article 34, 43 or 51 of the Pensions (Northern Ireland) Order 2005;

(e) any financial support direction issued under section 43 of the Act or Article 39 of the Pensions (Northern Ireland) Order 2005 in relation to the scheme;

(f) any restoration order made under section 52 of the Act or Article 48 of the Pensions (Northern Ireland) Order 2005 in respect of a transaction involving assets of the scheme; and

(g) the amount of any contributions expected to be made towards the scheme and the person from whom the contributions are expected.”;

(iii) in the third column, the words—

“The period of 28 days beginning on the later of—

- (a) the day on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force;
- (b) the notification date;
- (c) the day on which the appropriate person became aware of any debt referred to in paragraph (c) in the second column or the amount of any contributions referred to in paragraph (g) in the second column,

or such longer period as the scheme manager may determine for the provision of that information.”;

(4) After paragraph 1(2) of Schedule 1 insert—

“(2A) Where the scheme manager is satisfied that some or all of the information to be provided in accordance with the table in sub-paragraph (2) is not relevant to the exercise of its functions, it may determine that any such information need not be provided.”.

(5) In the third column of the first item in the table in paragraph 1 of Schedule 2 for “6 months” substitute “2 months”.

## PART 4

### Amendment of the FAS Internal Review Regulations and the FAS Appeals Regulations

#### **Amendment of the FAS Internal Review Regulations**

**20.**—(1) The FAS Internal Review Regulations are amended in accordance with this regulation.

(2) In regulation 2 (reviewable determinations)—

(a) after paragraph (1)(b) insert—

“(ba) the giving of a direction under section 134 of the Act or Article 118 of the Pensions (Northern Ireland) Order 2005 (“section 134 or Article 118 directions”);

(bb) the approval by the scheme manager of a valuation in respect of a qualifying pension scheme under regulation 25 of the FAS Regulations (approval of valuation) (“valuation approval”);

(bc) whether or not regulation 17D of the FAS Regulations (lump sum payments) applies in respect of a qualifying member and the amount of any lump sum determined in accordance with regulation 17D of the FAS Regulations (“lump sum assessment”);

(bd) the amount of any annual increase to an annual payment or ill health payment determined in accordance with Schedules 2 to 6 to the FAS Regulations or to a payment determined in accordance with Schedule 7 to the FAS Regulations (“indexation assessment”);

(be) eligibility for a payment in accordance with regulation 17G of the FAS Regulations (payments to beneficiaries other than qualifying members, survivors and surviving dependants) and the amount of any such payment (“scheme beneficiaries assessment”);

(bf) eligibility for a payment in accordance with regulation 17H of the FAS Regulations (payments to qualifying members receiving a pension from the

- qualifying pension scheme before entitlement to an annual payment or ill health payment) and the amount of any such payment (“early retiree assessment”);” and
- (b) in paragraph (1)(d), for “Schedule 2” substitute “Schedule 2, 3 or 4”;
  - (c) in paragraph (1)(f), for “Schedule 2A” substitute “Schedule 2A, 5 or 6 ”; and
  - (d) in paragraph (2), after “scheme eligibility,” insert “section 134 or Article 118 directions, valuation approval, lump sum assessment, indexation assessment, scheme beneficiaries assessment, early retiree assessment.”
- (3) In regulation 3 (notice of a reviewable determination)—
- (a) in paragraph (1)(b) omit “, subject to paragraph (1A),”;
  - (b) omit paragraph (1A);
  - (c) in paragraph (2) omit “or (1A),” and
  - (d) in paragraph (2)(d) after “completed winding up” insert “and a transfer notice has not been given in relation to the scheme under regulation 29 of the FAS Regulations”.
- (4) In regulation 5 (time for making an application for a review of a reviewable determination)—
- (a) for paragraph (1)(a) substitute—
    - “(a) in the case of a reviewable determination which—
      - (i) is made before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
      - (ii) relates to scheme notification or scheme eligibility,before the end of the period of two months beginning on the date on which that determination was made;
    - (aa) in the case of a reviewable determination which—
      - (i) is made after the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
      - (ii) relates to scheme notification or scheme eligibility,before the end of the period of one month beginning on the date on which that determination was made;
  - (ab) in the case of a reviewable determination which relates to member assessment or ill health payment assessment, at any time after the date on which that determination was made;
  - (ac) in the case of a reviewable determination which relates to valuation approval, before the end of the period of 21 days beginning on the date on which that determination was made;”;
- (b) in paragraph (1)(b)(ii) omit “or member assessment”;
- (c) in paragraph (1)(c)(ii) for “member assessment, ill health payment assessment,” substitute “indexation assessment, section 134 or Article 118 directions, lump sum assessment, early retiree assessment, scheme beneficiaries assessment;” and
- (d) in paragraph (3) after “paragraph (1)(a)” insert “, (aa)”.
- (5) In regulation 6 (applications for a review of a reviewable determination)—
- (a) in paragraph (1), after sub-paragraph (a) insert—
    - “(aa) which relates to section 134 or Article 118 directions may be made by any person to whom a direction under section 134 of the Act or Article 118 of the Pensions (Northern Ireland) Order 2005 has been given;

- (ab) which relates to valuation approval may be made by the trustees or managers of the qualifying pension scheme or a representative of those trustees or managers appointed under regulation 17(1);”;
- (b) in paragraph (1)(b) after “severe ill health eligibility” insert “, indexation assessment, lump sum assessment, scheme beneficiaries assessment, early retirees assessment”.

### **Amendment of the FAS Appeals Regulations**

**21.**—(1) The FAS Appeals Regulations are amended in accordance with this regulation.

(2) In regulation 2 (interpretation)—

(a) after the definition of “Deputy PPF Ombudsman” insert—

““early retiree assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not a person is entitled to a payment in accordance with regulation 17H of the FAS Regulations (payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment)”;

(b) in the definition of “ill health payment assessment decision”, for “Schedule 2A” substitute “Schedule 2A, 5 or 6”;

(c) after the definition of “ill health payment assessment decision” insert—

““indexation assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to the amount of any annual increase to an annual payment or ill health payment determined in accordance with Schedules 2 to 6 to the FAS Regulations or as to the amount of any annual increases to a payment determined in accordance with Schedule 7 to the FAS Regulations;”;

(d) after the definition of “interested person” insert—

““lump sum assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not regulation 17D of the FAS Regulations (lump sum payments) applies in respect of a qualifying member and the amount of any lump sum determined in accordance with regulation 17D of the FAS Regulations;”;

(e) in the definition of “member assessment decision”, for “Schedule 2” substitute “Schedule 2, 3 or 4”;

(f) after the definition of “review decision” insert—

““scheme beneficiaries decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to eligibility for and the amount of any payment in accordance with regulation 17G of the FAS Regulations (payments to beneficiaries other than qualifying members, survivors and surviving dependants);”;

(g) after the definition of “scheme notification decision” insert—

““section 134 or Article 118 directions decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to the giving of a direction under section 134 of the Act or Article 118 of the Pensions (Northern Ireland) Order 2005;”;

(h) after the definition of “terminal illness eligibility decision” insert—



““valuation approval decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to the approval of a valuation in respect of the qualifying scheme under regulation 25 of the FAS Regulations (approval of valuation);”;

(3) In regulation 6(2) (notice of appeal)—

(a) in sub-paragraph (b), after “a severe ill health eligibility decision” insert “, an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision, a scheme beneficiaries decision”; and

(b) in sub-paragraph (c), after “a scheme notification decision” insert “, a section 134 or Article 118 directions decision, a valuation approval decision”.

(4) In regulation 17(4)(a) (time and place of oral hearings), after “a survivor eligibility decision” insert “, a section 134 or Article 118 directions decision, a valuation approval decision, an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision, a scheme beneficiaries decision”.

Signed by authority of the Secretary of State for Work and Pensions.

1st April 2010

*Angela Eagle*  
Minister of State,  
Department for Work and Pensions

## SCHEDULE 1

Regulation 14

## Insertion of Parts 7 to 9 of the FAS Regulations

## “PART 7

## Valuation of assets and liabilities

**Application of this Part**

- 21.**—(1) This Part applies to a qualifying pension scheme where—
- (a) the qualifying pension scheme has not been fully wound up;
  - (b) the liabilities of that scheme to or in respect of all members and former members have not been discharged; and
  - (c) the liabilities of the scheme to or in respect of all members and former members of the scheme have not been, or in the opinion of the scheme manager are unlikely to be, discharged by way of—
    - (i) binding commitments to purchase annuities;
    - (ii) the scheme manager having given approval to the trustees of the scheme to purchase annuities under section 286A;
    - (iii) a transfer of, or transfer payment in respect of, members’ rights;
    - (iv) such other method of discharging any liability of the scheme for which the scheme manager has given approval under section 135(4C)(12); or
    - (v) state scheme premiums being paid pursuant to section 55 of the 1993 Act or state scheme rights having been restored under regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(13) or regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(14).
- (2) This Part applies to a qualifying member of a qualifying pension scheme where—
- (a) the liabilities of that scheme to and in respect of that member have not been, or, in the opinion of the scheme manager, are unlikely to be, fully discharged as a result of any of the methods listed in paragraph (1)(c); or
  - (b) the liabilities of the scheme to and in respect of that member have not been, or, in the opinion of the scheme manager, are unlikely to be, partially discharged by way of—
    - (i) a binding commitment to purchase an annuity; or
    - (ii) the scheme manager having given approval to the trustees of the scheme to purchase an annuity under section 286A.
- (3) Notwithstanding paragraph (2)(b), this Part applies to a qualifying member of a qualifying pension scheme where the liabilities of the scheme for and in respect of that member have been partially discharged by one of the methods listed in paragraph (2)(b) if the only liabilities so discharged relate to benefits derived from the payment of voluntary contributions.

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(12) As modified by these Regulations.

(13) S.I. 1996/1172. Regulation 49 was amended by S.I. 2005/3377 and 2008/1903 and section 1(2) of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2).

(14) S.R. 1996 No. 493. Regulation 49 was amended by S.I. 1996/3377 and 2008/1903 and Article 3(2) of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671).

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(4) In this regulation, no account shall be taken of any money purchase benefits when determining the liabilities of the scheme.

### **Scheme manager to obtain a valuation of assets and liabilities**

**22.**—(1) Where this Part applies, the scheme manager shall, when it considers it appropriate to do so, instruct the trustees or managers of a qualifying pension scheme to obtain for the scheme manager a valuation of the assets and liabilities of the pension scheme as at the calculation date.

(2) Subject to paragraph (3), where the trustees or managers are instructed to obtain a valuation under paragraph (1), they shall obtain the valuation and it shall include a valuation of the asset share—

(a) of, or in respect of, each qualifying member to whom this Part applies; and

(b) of any other person who is not—

(i) a qualifying member;

(ii) a survivor of a qualifying member; or

(iii) a surviving dependant of a qualifying member,

to whom the scheme has a liability to provide a pension or other benefit which is not a money purchase benefit.

(3) Where the scheme manager is of the opinion that it is not appropriate that a valuation in accordance with paragraph (2)(a) or (b) is obtained in relation to a particular person or category of persons, the valuation shall not include a valuation of that asset share, or, as the case may be, those asset shares.

(4) Where the scheme manager is of the opinion that it is not appropriate to obtain a valuation of some or all of the liabilities of the pension scheme in relation to a particular person or category of persons, the valuation shall not include a valuation of those liabilities.

(5) The valuations referred to in paragraphs (1) and (2) must be—

(a) prepared and signed by a person (“the valuation actuary”)—

(i) who is—

(aa) a Fellow of the Faculty of Actuaries;

(bb) a Fellow of the Institute of Actuaries; or

(cc) a person approved by the Secretary of State; and

(ii) approved by the scheme manager for the purposes of carrying out a valuation under paragraph (1);

(b) prepared in accordance with guidance published from time to time by the Secretary of State;

(c) presented in such manner and form as set out in guidance published from time to time by the scheme manager; and

(d) given to the scheme manager upon completion, together with such information as set out in guidance published from time to time by the Secretary of State.

(6) The scheme manager may direct the trustees or managers whom to appoint as valuation actuary.

(7) When valuing the assets of the scheme, the valuation actuary shall disregard—

(a) any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;

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- (b) any assets held by or vested in the trustees or managers of the scheme which are to be used prior to transfer of the scheme's assets in accordance with section 161 (as modified by Schedule 1 to these Regulations) to discharge liabilities in respect of voluntary contributions;
  - (c) any assets, the value of which is required to discharge the scheme's pension liabilities to or in respect of a qualifying member to whom this Part does not apply;
  - (d) any debt due, or treated as due, to the trustees or managers which, in the opinion of the scheme manager, is unlikely to be recovered without disproportionate cost or within a reasonable time;
  - (e) an amount in respect of the value of any pre-6th April 1997 contract of insurance if—
    - (i) the trustees or managers have taken all reasonable steps to obtain information concerning that contract of insurance (whether by searching the records of the scheme or otherwise); and
    - (ii) the information that they provide concerning that contract of insurance is insufficient, in the opinion of the valuation actuary, to conduct a valuation;
  - (f) any payments made to the trustees or managers of the qualifying pension scheme under regulation 14B (payments in relation to administration and other costs); and
  - (g) any amount which is required to discharge expenses which have been, or will be reasonably incurred by the trustees or managers of the scheme.
- (8) In paragraph (7)(e), "pre-6th April 1997 contract of insurance" means a contract of insurance—
- (a) which is a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8);
  - (b) which was taken out before 6th April 1997; and
  - (c) of which the trustees or managers are, or should reasonably be, aware.
- (9) Where the scheme manager is of the opinion that it is not appropriate for an asset to be disregarded under paragraph (7)(c), the valuation actuary shall not disregard it.

### **Valuation of assets**

**23.**—(1) This regulation is subject to regulation 24.

(2) Subject to paragraphs (3) to (10), for the purposes of the valuation of the assets of a qualifying pension scheme the valuation actuary shall adopt the given value of the assets of the scheme stated in the relevant accounts as the value of those assets as at the calculation date.

(3) The value of a contract of insurance shall be—

- (a) where the contract of insurance is a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8), the value of the liability secured; or
- (b) subject to paragraph (4), where the contract of insurance is not a relevant contract of insurance within that meaning, the surrender value of the contract of insurance.

(4) Where a contract of insurance is not a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8) and it appears to the valuation actuary that the surrender value of the contract of insurance does not accurately reflect the actual value at the calculation date, the valuation actuary shall adopt such a value as appears to that actuary to be appropriate.

(5) Subject to paragraph (6), where—

- (a) a contribution notice has been issued under section 38 or 47 or Article 34 or 43;

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- (b) a financial support direction has been issued under section 43 or Article 39; or
- (c) a restoration order has been made under section 52 or Article 48,

in relation to the qualifying pension scheme, the valuation actuary shall adopt the amount due to the scheme given in the notice, direction or order as the value of the asset.

(6) Where—

- (a) an amount is due under a notice, direction or order referred to in paragraph (5); and
- (b) the valuation actuary is of the opinion that the amount due in relation to the notice, direction or order will not be recouped in full by the scheme,

the valuation actuary shall adjust the value of the asset referred to in paragraph (5) to the value which, in the opinion of the valuation actuary is likely to be recouped by the trustees or managers of the qualifying pension scheme.

(7) Where the valuation actuary is of the opinion that any debt due, or treated as due, will be recouped in the future, the proportion of the debt that the valuation actuary expects to be recouped shall be treated as an asset of the scheme.

(8) Where—

- (a) the valuation actuary has been given notice; or
- (b) (i) the valuation actuary is of the opinion; and  
(ii) the scheme manager agrees with the valuation actuary's opinion,

that the value of any asset set out in the relevant accounts, that is not excluded from the valuation, is substantially different at the calculation date from that set out in the relevant accounts, the valuation actuary shall adjust the value of the asset to the market value of the asset at the calculation date.

(9) Where the valuation actuary has been given notice, or is of the opinion, that there exists an asset of the scheme which is not listed in the relevant accounts and which is not excluded from the valuation, the valuation actuary shall adopt such a value for the asset as appears to that actuary to be appropriate.

(10) Where the relevant accounts are not readily available and the scheme manager is of the opinion that it is not necessary for the purposes of this Part to require their preparation, the valuation actuary shall determine the value of the assets as at the calculation date on the basis of such information as the scheme manager considers appropriate.

(11) When acting under this regulation, the valuation actuary shall act in accordance with guidance issued by the Secretary of State.

#### **Power of the scheme manager to determine the value of an asset**

**24.**—(1) Where the scheme manager is of the opinion that any asset in the scheme has a particular value, the scheme manager may determine the value of that asset of the scheme.

(2) Where the scheme manager makes a determination in accordance with paragraph (1), the valuation actuary shall adopt the value determined by the scheme manager as the value of the asset as at the calculation date.

#### **Approval of valuation**

**25.**—(1) Where the scheme manager is satisfied that the valuation has been prepared in accordance with this Part, it must—

- (a) approve the valuation; and
- (b) notify the trustees or managers of the qualifying pension scheme of the approval.

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(2) Where the scheme manager is not so satisfied, it must instruct the trustees or managers of the qualifying pension scheme to obtain another valuation under this Part.

(3) Where the scheme manager gives an instruction in accordance with paragraph (2), the trustees or managers of the qualifying pension scheme shall obtain another valuation and it shall be calculated as at the calculation date as determined in relation to the previous valuation.

### **Binding valuation**

**26.**—(1) A valuation obtained under regulation 22 is not binding until—

- (a) it is approved under regulation 25;
- (b) the period within which an application for a review of the approval of the valuation may be made under regulation 5 of the Financial Assistance Scheme (Internal Review) Regulations 2005 (time for making an application for a review of a reviewable determination) has expired; and
- (c) where an application referred to in sub-paragraph (b) is made—
  - (i) the internal review;
  - (ii) any appeal to the Ombudsman in respect of the approval; and
  - (iii) any appeal against any determinations or directions given or made by the Ombudsman in respect of such an appeal,

has been finally disposed of.

(2) Where a valuation becomes binding under this regulation the scheme manager must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to—

- (a) the trustees or managers of the qualifying pension scheme; and
  - (b) the Regulator.
- (3) The notice given by the scheme manager under paragraph (2) shall contain—
- (a) a statement that it is a notice under regulation 26 of the Financial Assistance Scheme Regulations 2005;
  - (b) the date on which the notice is given;
  - (c) the name, address and pension scheme registration number of the qualifying pension scheme in respect of which the notice is given;
  - (d) a statement that the valuation under Part 7 has become binding;
  - (e) the date on which the notice was given;
  - (f) the name of the employer in relation to the qualifying pension scheme in respect of which the notice is given; and
  - (g) whether the notice given by the scheme manager contains any restricted information and, if so, the nature of the restriction.

## **PART 8**

### **Scheme manager functions after a valuation**

#### **Scheme manager calculations after a valuation**

**27.**—(1) Subject to paragraph (2), where a valuation has been obtained in accordance with regulation 22, the scheme manager shall determine—

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- (a) the annual rate of annuity (“the notional pension”) which could have been payable from the day determined in accordance with paragraphs (3) and (4) until the day determined in accordance with paragraph (5), if purchased on the calculation date with the asset share determined in accordance with regulation 22(2), in respect of—
  - (i) each qualifying member of the qualifying pension scheme to whom Part 7 applies; and
  - (ii) any other person who is not—
    - (aa) a qualifying member;
    - (bb) a survivor of a qualifying member; or
    - (cc) a surviving dependant of a qualifying member,to whom the scheme, as a result of the death of a qualifying member, has a liability to provide a pension or other benefit which is not a money purchase benefit;
- (b) where a qualifying member, who is not a qualifying member by virtue of regulation 15(5), has not died before the calculation date, the benefits that could have been purchased for a survivor and any surviving dependants with the asset share determined in accordance with regulation 22(2);
- (c) where a qualifying member to whom Part 7 applies has died before the calculation date, the annual rate of annuity (“the survivor notional pension”) which could have been purchased in respect of each survivor and surviving dependant of that qualifying member with the asset share determined in accordance with regulation 22(2); and
- (d) any annual increases to the notional pension and the survivor notional pension which could have been purchased with the asset share determined in accordance with regulation 22(2).

(2) Where the scheme manager is of the opinion that it is not appropriate that a determination in accordance with paragraph (1) is made in relation to a particular person or category of persons, the scheme manager shall not make a determination in accordance with paragraph (1) in relation to such a person or category of persons.

(3) Subject to paragraph (4), the day from which the notional pension could have been payable for the purposes of paragraph (1)(a) is—

- (a) where the notional pension is in respect of a qualifying member who, on the calculation date, is neither entitled to an ill health payment nor receiving a present payment from the scheme, the day on which the qualifying member attains normal retirement age;
- (b) where the notional pension is in respect of a qualifying member who is not a qualifying member by virtue of regulation 15(5) and who is, on the calculation date, entitled to an ill health payment or receiving a present payment from the scheme, the earlier of—
  - (i) the day on which the qualifying member began to receive a present payment from the scheme in accordance with scheme rules;
  - (ii) the day on which the qualifying member attains normal retirement age; and
  - (iii) the day on which the qualifying member became entitled to an ill health payment;
- (c) where the notional pension is in respect of a qualifying member who is a qualifying member by virtue of regulation 15(5), the day on which the qualifying member began to receive a present payment from the scheme in accordance with scheme rules;

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- (d) where the notional pension is in respect of a person referred to in paragraph (1)(a)(ii), the day on which the liability to provide the pension or other benefit arose; and
- (e) where a survivor notional pension is being determined, the day after the day on which the qualifying member died.

(4) Where the day determined in accordance with paragraph (3)(b) or (c) falls before the day on which the qualifying pension scheme began to be wound up, the day for the purposes of paragraph (1)(a) is the day on which the qualifying pension scheme began to be wound up.

(5) The day on which the notional pension ceases to be payable for the purposes of paragraph (1)(a) is the day on which entitlement to a payment would end in accordance with these Regulations.

(6) The scheme manager shall make the determination in paragraph (1) by applying the asset share towards satisfying the amounts mentioned in paragraph (7) and—

- (a) if sub-paragraph (a) or (b) of paragraph (7) applies and the asset share is insufficient to satisfy the amounts referred to in that sub-paragraph in full, then the asset share must be applied first towards satisfying the amounts mentioned in paragraph (i) of sub-paragraph (a) or (b), as the case may be; and
- (b) if the asset share exceeds the amount needed to satisfy those amounts in full, the remainder shall be applied so as to increase the notional pension.

(7) The amounts referred to in paragraph (6) are—

- (a) where the notional pension is in respect of a qualifying member who was receiving a present payment from the qualifying pension scheme under the scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010—

- (i) the pension and other benefits to which the qualifying member was entitled as at the later of—

- (aa) the day on which the qualifying member became entitled to present payment of a pension under the scheme rules; or

- (bb) the day before the day on which the scheme began to be wound up; and

- (ii) annual increases on the amount determined in accordance with paragraph (i);

- (b) where the notional pension is in respect of a person referred to in paragraph (1)(a)(ii)—

- (i) the pension to which that person was entitled on the day on which the liability to provide the pension or other benefit arose; and

- (ii) annual increases on the amount determined in accordance with paragraph (i); and

- (c) where the notional pension is in respect of a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, the annuity which could be purchased in respect of the qualifying member including—

- (i) the pension and other benefits payable to the qualifying member from the date determined in accordance with paragraph (3);

- (ii) benefits which could be purchased for any survivor and surviving dependant of the qualifying member; and

- (iii) annual increases on the amounts determined in accordance with paragraphs (i) and (ii).



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(8) In determining the amounts mentioned in paragraph (7)(c)(ii), the scheme manager shall have regard to the benefits that would be payable to any survivor or surviving dependant under Schedule 3, or, where the qualifying member is entitled to an ill health payment at the calculation date, under Schedule 5.

(9) The survivor notional pension referred to in paragraph (1)(c) shall be determined by applying the asset share towards satisfying the amounts mentioned in paragraph (10) and—

- (a) if sub-paragraph (a) of paragraph (10) applies and the asset share is insufficient to satisfy the amounts referred to in that sub-paragraph in full, then the asset share must be applied first towards satisfying the amounts mentioned in paragraph (i); and
- (b) if the asset share exceeds the amount needed to satisfy those amounts in full, the remainder shall be applied so as to increase the survivor notional pension.

(10) The amounts referred to in paragraph (9) are—

- (a) where the survivor, surviving dependant or the qualifying member in respect of the survivor or surviving dependant was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010—
  - (i) the pension and other benefits to which the survivor or surviving dependant would be entitled as at the day on which the survivor or surviving dependant became entitled to present payment of a pension under the scheme rules; and
  - (ii) annual increases on the amount determined in accordance with paragraph (i); and
- (b) where the survivor, surviving dependant or qualifying member in respect of the survivor or surviving dependant was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, the annuity which could be purchased, including annual increases for the survivor or surviving dependant.

(11) In paragraphs (7)(a)(i) and (10)(a)(i), the pension and other benefits to which the asset share shall be applied in accordance with this regulation are—

- (a) the annual rate of pension to which the beneficiary was entitled in accordance with the scheme rules, after any commutation of benefits deriving from the scheme, after the day on which the scheme began to be wound up;
- (b) where the beneficiary is a qualifying member, the annual rate of pension to which any survivor or surviving dependant would be entitled in accordance with scheme rules in respect of the qualifying member;
- (c) any amount (including any lump sum) payable as a result of a member of the scheme dying within a period specified in the scheme rules which begins on the day on which the member became entitled to a pension from the scheme or, if later, the day on which the pension was first paid; and
- (d) any amount which, under the scheme rules, is payable to a beneficiary for a period which is shorter than the period in respect of which the remainder of the pension is payable.

(12) Where the scheme manager is required to determine annual increases for the purposes of this regulation, the scheme manager shall have regard to the way in which annual increases are determined under—

- (a) where paragraph (7)(c) or (10)(b) applies and—

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- (i) the beneficiary is not entitled to an ill health payment at the calculation date, paragraph 6 of Schedule 3; or
  - (ii) the beneficiary is entitled to an ill health payment at the calculation date, paragraph 6 of Schedule 5;
  - (b) where paragraph (7)(a) or (10)(a) applies and—
    - (i) the beneficiary is not entitled to an ill health payment at the calculation date, paragraph 7 of Schedule 4; or
    - (ii) the beneficiary is entitled to an ill health payment at the calculation date, paragraph 7 of Schedule 6; and
  - (c) paragraph 4 of Schedule 7, where paragraph (7)(b) applies.
- (13) For the purposes of this regulation—
- (a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations—
    - (i) the qualifying member was entitled to payment under the scheme rules;
    - (ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and
    - (iii) the qualifying member's entitlement became payable, as a result of (i) and (ii) being satisfied; and
  - (b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.
- (14) This regulation is subject to regulation 28.

#### **Determination of certain asset shares, notional pensions and survivor notional pensions**

**28.**—(1) Where regulation 22(3) applies in any case, the scheme manager shall determine the asset share for the purposes of these Regulations in respect of any person to which that regulation applies, having regard to such matters as it considers relevant.

(2) Where regulation 27(2) applies in any case, the scheme manager shall determine the notional pension or survivor notional pension for the purposes of these Regulations in respect of any person to which that regulation applies, having regard to such matters as it considers relevant.

(3) Paragraph (4) applies where—

- (a) a qualifying member commutes a portion of their pension from the qualifying scheme for a lump sum after the calculation date and before the day on which the transfer notice is given; and
- (b) a qualifying member, prior to attaining normal retirement age or becoming entitled to an ill health payment, begins to receive a present payment from the qualifying scheme after the calculation date and before the day on which the transfer notice is given.

(4) Where this paragraph applies, the scheme manager may redetermine the notional pension having regard to—

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- (a) where paragraph (3)(a) applies, the amount of the lump sum;
- (b) where paragraph (3)(b) applies—
  - (i) the qualifying member’s normal retirement age; and
  - (ii) the date on which the qualifying member began to receive a present payment from the scheme; and
- (c) such other matters as the scheme manager considers relevant.

### **Transfer notice**

**29.**—(1) Where a valuation has become binding under regulation 26 and the scheme manager is satisfied that it is an appropriate time for the notice to be given, the scheme manager must give the trustees or managers of the qualifying pension scheme a notice (a “transfer notice”).

- (2) Where a transfer notice is given under this regulation the scheme manager—
  - (a) must give a copy of the transfer notice to the Regulator; and
  - (b) may give a copy of the transfer notice to any other person to whom, in the opinion of the scheme manager, the transfer notice is relevant.

(3) Where the trustees or managers have been discharged from their obligations to provide pensions or other benefits to or in respect of any persons in accordance with section 161 as modified, the scheme manager shall notify those persons, or where such person has an appointed representative, that appointed representative within 28 days of the transfer notice being given.

### **Terms and conditions of contracts**

**30.**—(1) Where a transfer notice has been given to the trustees or managers of a qualifying pension scheme and the scheme manager considers that a contract relating to the property, rights and liabilities of the scheme contains terms or conditions that the scheme manager considers onerous, the scheme manager may—

- (a) disapply any such term or condition; or
- (b) substitute for the term or condition, a term or condition that the scheme manager considers to be reasonable.

- (2) Where—
  - (a) any rights or liabilities under a relevant contract of insurance are transferred to the Secretary of State by virtue of section 161 of, and Schedule 6 to, the Pensions Act as modified; and
  - (b) as a result of the transfer, the Secretary of State is required, by reason of a term of that contract, to pay a specified amount or specified amounts to a specified person who, immediately before the time the transfer notice was given, was a member of the scheme or a person entitled to benefits in respect of such a member,

the scheme manager may modify that term of the contract so that any benefit under that contract shall be payable to the Secretary of State.

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## PART 9

### Miscellaneous payments and residual assets

#### **Payments where amounts relating to money purchase benefits are transferred to the Secretary of State**

**31.**—(1) Subject to paragraph (3), where the property transferred to the Secretary of State under section 161 (as modified by Schedule 1 to these Regulations) includes property representing the value of rights in respect of money purchase benefits under the scheme rules, the scheme manager must make arrangements to facilitate a payment or payments to be made to any person in respect of whom the qualifying pension scheme held the assets.

(2) The scheme manager must be satisfied that the arrangement made under paragraph (1) is made in respect of the full value of the assets transferred as at the date the arrangement is made.

(3) Where the person in respect of whom the assets were held has died, the arrangement under paragraph (1) shall be made in respect of the estate of the deceased person.

#### **Payments to estates where a person in receipt of a payment from a scheme dies prior to entitlement and prior to transfer of assets**

**32.**—(1) This regulation applies where—

- (a) a person in respect of whom an asset share has been determined dies on or after the calculation date and prior to the day on which the transfer notice is given;
- (b) that person was not entitled to an annual payment or an ill health payment on the day on which that person died;
- (c) that person was receiving a present payment from the scheme immediately before the day on which the person died; and
- (d) the scheme manager is satisfied that the amount of any interim pension from the scheme paid to that person in respect of any year from the later of—
  - (i) the day on which the person began to receive a payment from the scheme; and
  - (ii) the day on which the scheme began to wind up,until the day on which the person died is lower than the sum of the notional pension and any annual increases which the scheme manager has determined under regulation 27 could be paid, in respect of that year.

(2) Where this regulation applies, the scheme manager may, after the transfer notice has been given, make a payment to the person's estate, having regard to—

- (a) the amount of any interim pension which was paid to the person;
- (b) the amount of the sum of—
  - (i) the notional pension; and
  - (ii) any annual increases determined in accordance with regulation 27; and
- (c) such other matters as the scheme manager considers relevant.

#### **Transfer of residual assets to the Secretary of State where Part 7 does not apply**

**33.**—(1) This regulation applies where—

- (a) Part 7 does not apply to a qualifying pension scheme because the liabilities to or in respect of all members and former members have been discharged;
- (b) the trustees or managers continue to hold assets for the scheme;

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- (c) the trustees or managers have notified the scheme manager in writing that they wish to transfer the assets to the Secretary of State; and
- (d) the scheme manager is satisfied that—
  - (i) either—
    - (aa) the cost of distributing the remaining assets to the members or former members of the scheme would be disproportionate; or
    - (bb) the distribution of the remaining assets would not be of overall benefit to the members or former members of the scheme;
  - (ii) the assets can be transferred to the Secretary of State; and
  - (iii) it is appropriate that the assets are transferred to the Secretary of State.

(2) Where this regulation applies, the trustees or managers of a qualifying pension scheme to which Part 7 does not apply may transfer the remaining assets to the Secretary of State at such time as the Secretary of State may decide.”

## SCHEDULE 2

Regulation 18

### Insertion of Schedules 3 to 7 to the FAS Regulations

## “SCHEDULE 3

Regulation 17(8)(b) to (f) and (16)(a)

### Determination of certain annual payments

#### **Introductory**

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment payable to a beneficiary to whom regulation 17(8)(b) to (f) or (16)(a) applies.

(2) In this Schedule—

“A” means—

- (a) where the qualifying member is a qualifying member to whom regulation 17D applied, the amount by which the qualifying member’s annual payment has been commuted; and
- (b) in all other cases, nil;

“B” means—

- (a) where either or both sub-paragraphs (3) or (6) apply, the amount by which the scheme manager determines the annual payment which would otherwise be payable under this Schedule is to be reduced;
- (b) where the beneficiary is a qualifying member to whom regulation 17H applied, the amount, if any, by which the scheme manager determined the payment which would otherwise have been payable under Schedule 7 should be reduced; and
- (c) in all other cases, nil;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) of paragraph 4 applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;

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(b) where paragraph 4(4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under paragraph 4(3)(a), nil; and

(c) in all other cases, nil;

“J” means—

(a) where the qualifying member became entitled to an annual payment or began to receive a present payment from the qualifying scheme prior to the day on which the transfer notice was given, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and

(b) in all other cases, nil;

“N” means—

(a) in paragraph 3, the number of survivors of that qualifying member; and

(b) in paragraph 4, the number of surviving dependants of that qualifying member;

“Q” means—

(a) where the beneficiary is a person to whom regulation 17(17)(a) applies, the payment to which the qualifying member was entitled in accordance with Schedule 7 immediately before the qualifying member died; and

(b) in all other cases, the sum of—

(i) R-A;

(ii) the total amount of any annual increases which the scheme manager considers could have been paid, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11), from the relevant date until the earlier of—

(aa) the day on which the transfer notice is given; and

(bb) the day on which the qualifying member died;

(iii) where the qualifying member died after the calculation date but before the day on which the transfer notice was given, double the total amount of any annual increases which the scheme manager considers could have been paid to a survivor (on the basis that there is one survivor) from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and

(iv) where the qualifying member died on or after the day on which the transfer notice was given, the total amount of any annual increases to which the qualifying member was entitled in accordance with paragraph 6 on the day on which the qualifying member died;

“R” means the amount of the revalued notional pension as construed in accordance with regulation 17(10);

“S” means—

(a) where paragraph 3(2) applies, the total amount of increases to which any survivor was entitled under this Schedule on the day on which the survivor died; and

(b) where sub-paragraph (4) of paragraph 4 applies, the total amount of increases to which any survivor was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred; and

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(c) in all other cases, nil; and

“relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an annual payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary is a qualifying member to whom paragraph (a) does not apply, but to whom paragraph (3) or (3C) applies, the date on which the qualifying member became entitled to an annual payment under that paragraph; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(3) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before the day on which a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the annual payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(4) Sub-paragraph (6) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (5) is higher or lower than the sum of—

- (a) the revalued notional pension, or the survivor notional pension, as the case may be; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d);
  - (ii) the revaluation amount determined in accordance with regulation 17(11); and
  - (iii) the proportion of that year which falls after the 1<sup>st</sup> January.

(5) For the purposes of sub-paragraph (4), the period is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
  - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
- (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

(6) Where this sub-paragraph applies, the scheme manager may—

- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and

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- (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (4) (a) and (b) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary’s estate, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant.

**Amount of an annual payment – qualifying members**

2. The annual payment payable to a qualifying member to whom this Schedule applies shall be—  
 $R - A + J - B$ .

**Amount of an annual payment - survivors**

- 3.—(1) Where this Schedule applies, the annual payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17(8)(f) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that survivor; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and

- (b) where regulation 17(8)(c) to (e) or (16)(a) applies—
  - (i) where sub-paragraph (ii) does not apply—

$$\frac{Q}{2} + S;$$

- (ii) where the qualifying member was a party to a polygamous marriage—

$$\frac{(0.5 \times Q) + S}{N}.$$

- (2) Where a survivor to whom sub-paragraph (1)(b)(ii) applies dies, the annual payment payable to all remaining survivors of the qualifying member shall be redetermined with effect from the day after the day on which the survivor died.

**Surviving Dependants**

- 4.—(1) Where this Schedule applies, the annual payment payable to a surviving dependant of a qualifying member shall be—



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- (a) where regulation 17(8)(f) applies, the amount which is the sum of—
- (i) the survivor notional pension determined in respect of that surviving dependant; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,
- less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and
- (b) where regulation 17(8)(c) to (e) or (16)(a) applies, determined in accordance with subparagraphs (2) to (4).
- (2) Where an annual payment is also payable to a survivor of a qualifying member and—
- (a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{0.5 \times Q}{2} + D;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{(0.5 \times Q) + D}{N}.$$

- (3) Where an annual payment is not payable to a survivor of a qualifying member and—
- (a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{Q}{2} + S + D;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{Q + S + D}{N}.$$

- (4) Where—

- (a) a survivor of a qualifying member dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

### **Rounding**

5. Where the amount of an annual payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

### **Annual increases to an annual payment**

6.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an annual amount determined in accordance with this Schedule shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or

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- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date; and
- (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) the product of X multiplied by—
  - (i) where the beneficiary is a qualifying member or a survivor or surviving dependant of a qualifying member who died on or after the calculation date—
    - (aa) where the qualifying member is not a qualifying member to whom regulation 17D applied, so much of the revalued notional pension as is attributable to post-1997 service; or
    - (bb) where the qualifying member is a qualifying member to whom regulation 17D applied, so much of the sum of R-A as is attributable to post-1997 service; and
  - (ii) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, so much of the survivor notional pension as is attributable to the qualifying member’s post-1997 service;
- (b) where the beneficiary is a qualifying member, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11);
- (c) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given;
- (d) where the beneficiary is a survivor or a surviving dependant of a qualifying member who died on or after the calculation date but before the day on which the transfer notice was given, the sum of—
  - (i) the product of X multiplied by the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and
  - (ii) the total amount of any annual increases which the scheme manager considers could have been paid to the beneficiary from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11);
- (e) where the beneficiary is the survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the product of X multiplied by the sum of—

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- (i) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and
  - (ii) the total amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day on which the qualifying member died; and
- (f) any annual increases to which the beneficiary is entitled under this Schedule immediately before the indexation date;

“post-1997 service” means—

- (a) pensionable service (either actual or notional) which occurred on or after 6th April 1997; or
- (b) where the pension was payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“X” means—

- (a) 1, where the beneficiary is the qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined;
- (b) 0.5, where the beneficiary is a survivor who is neither—
  - (i) a survivor to whom paragraph 3(1)(b)(ii) applies; nor
  - (ii) a survivor in respect of whom a survivor notional pension has been determined;
- (c) the product of 0.5 divided by Y, where the beneficiary is a survivor to whom paragraph 3(1)(b)(ii) applies;
- (d) the product of 1 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and the qualifying member does not have a survivor; or
- (e) the product of 0.5 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and an annual payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

(3) In determining the underlying rate where a qualifying member is a qualifying member to whom regulation 17D applied, the amount of R-A that is attributable to post-1997 service is determined by attributing the sum to pre-1997 service and post-1997 service in the same proportions as the revalued notional pension would have been attributed had regulation 17D not applied.

## SCHEDULE 4

Regulation 17(8)(g) to (k) and (16)(b)

Determination of annual payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010

**Introductory**

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment payable to a beneficiary to whom regulation 17(8)(g) to (k) or (16)(b) applies.

(2) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the annual payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3) Sub-paragraph (5) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (4) is higher or lower than the sum of—

- (a) the notional pension, or the survivor notional pension, as the case may be; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d); and
  - (ii) the proportion of that year which falls after the 1<sup>st</sup> January.

(4) For the purposes of sub-paragraph (3), the period is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
  - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
- (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

(5) Where this sub-paragraph applies, the scheme manager may—

- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (3) (a) and (b) in respect of that year, make a payment to the beneficiary or, where the

beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—

- (i) the amount of interim pension which was paid to the beneficiary;
- (ii) the amount of the sum of—
  - (aa) the notional pension or survivor notional pension; and
  - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
- (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
- (iv) such other matters as the scheme manager considers relevant.

(6) In this Schedule—

“relevant date” means the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4); and

“relevant proportion”, in relation to a beneficiary, means the proportion of the notional pension which relates to the beneficiary.

(7) Where—

- (a) the beneficiary is a qualifying member to whom regulation 17H applied; and
- (b) the scheme manager made a determination in accordance with paragraph 1(2) or (5) of Schedule 7, to reduce the payment under that Schedule by any amount,

the scheme manager shall reduce the amount of the annual payment payable under this Schedule by the same amount.

### **Qualifying members**

2. Where this Schedule applies, the annual payment payable to a qualifying member shall be the sum of—

- (a) the notional pension determined in respect of the qualifying member; and
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2), (5) or (7).

### **Survivors**

3. Where this Schedule applies, the annual payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17(8)(h) or (i) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that survivor; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given,less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);
- (b) where regulation 17(8)(j) applies, the amount which is the sum of—

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- (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice was given;
- (c) where regulation 17(8)(k) applies, the amount which is the sum of—
- (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and
  - (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died; and
- (d) where regulation 17(17)(b) applies, the relevant proportion of the payment to which the qualifying member was entitled in accordance with Schedule 7 immediately before the qualifying member died.

### **Surviving Dependants**

4. Where this Schedule applies, the annual payment payable to a surviving dependant of a qualifying member shall be—

- (a) where regulation 17(8)(h) or (i) applies, the amount which is the sum of—
- (i) the survivor notional pension determined in respect of that surviving dependant; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given,
- less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);
- (b) where regulation 17(8)(j) applies, the amount which is the sum of—
- (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;
  - (ii) the relevant proportion of the amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension, from the day after the day on which the qualifying member died until the day on which the transfer notice was given;
- (c) where regulation 17(8)(k) applies, the amount which is the sum of—
- (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;

- (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and
- (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died; and
- (d) where regulation 17(17)(b) applies, the relevant proportion of the payment to which the qualifying member was entitled in accordance with Schedule 7 immediately before the qualifying member died.

### **Redetermination**

5.—(1) This paragraph applies where the notional pension or survivor notional pension includes an amount in respect of an amount which under scheme rules—

- (a) would be payable for a period which is shorter than the period in respect of which the remainder of a pension would be payable; or
- (b) would be payable as a result of a qualifying member dying within a period specified in scheme rules which begins on the day on which the member became entitled to a pension from the scheme, or the day on which the pension was first paid.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to the beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable, or the period referred to in sub-paragraph (1)(b) would have ended.

(3) When redetermining an annual payment under sub-paragraph (2), the scheme manager shall redetermine the notional pension or survivor notional pension having regard to the amount referred to in sub-paragraph (1).

### **Rounding**

6. Where the amount of an annual payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

### **Annual increases to an annual payment**

7.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, where the asset share determined in respect of the beneficiary was sufficient to be applied to the amounts referred to in regulation 27(7)(a)(ii) or (10)(a)(ii), a beneficiary shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date; and
- (b) 2.5%;

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“underlying rate” means—

- (a) where the beneficiary is a qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the aggregate of—
  - (i) so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) or (10)(a)(ii) could be increased;
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension, or survivor notional pension, as the case may be, from the relevant date until the day on which the transfer notice is given; and
  - (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;
- (b) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the aggregate of—
  - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid to the qualifying member on the notional pension from the relevant date until the day on which the transfer notice is given;
  - (iii) the relevant proportion of any annual increases to which the qualifying member was entitled in accordance with this Schedule on the day on which the qualifying member died; and
  - (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; and
- (c) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the calculation date but prior to the day on which the transfer notice was given, the aggregate of—
  - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the relevant date until the day on which the qualifying member died;
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and
  - (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date.

(3) In the definition of “underlying rate” in sub-paragraph (2), the reference to annual payments is to the amount of annual payment prior to any reduction made by the scheme manager under paragraph 1(2) or (5).



## SCHEDULE 5

Regulation 17A(8)(b) to (e)

### Determination of certain ill health payments

#### Introductory

**1.—**(1) This Schedule applies for the purposes of determining the amount of an ill health payment payable to a beneficiary to whom regulation 17A(8)(b) to (e) applies.

(2) In this Schedule—

“A” means—

- (a) where the qualifying member is a qualifying member to whom regulation 17D applied, the amount by which the qualifying member’s ill health payment has been commuted; and
- (b) in all other cases, nil;

“B” means—

- (a) where either or both sub-paragraphs (3) or (6) apply, the amount by which the scheme manager determines the ill health payment which would otherwise be payable under this Schedule is to be reduced;
- (b) where the beneficiary is a qualifying member to whom regulation 17H applied, the amount, if any, by which the scheme manager determined the payment which would otherwise have been payable under Schedule 7 should be reduced; and
- (c) in all other cases, nil;

“C” means—

- (a) 1, where the qualifying member was—
  - (i) entitled to an ill health payment on the calculation date; or
  - (ii) receiving a present payment from the scheme on the calculation date; and
- (b) the actuarial factor to be applied in respect of the beneficiary for the purposes of this Schedule, where the qualifying member was not receiving a present payment from the scheme on the calculation date and became entitled to an ill health payment after the calculation date;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) of paragraph 4 applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where paragraph 4(4)(a) applies and, as a result, the ill health payment payable to a surviving dependant is redetermined under paragraph 4(3)(a), nil; and
- (c) in all other cases, nil;

“J” means—

- (a) where the qualifying member became entitled to an ill health payment or began to receive a present payment from the qualifying scheme prior to the day on which the transfer notice was given, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A (11); and
- (b) in all other cases, nil;

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“N” means—

- (a) in paragraph 3, the number of survivors of that qualifying member; and
- (b) in paragraph 4, the number of surviving dependants of that qualifying member;

“Q” means the sum of—

- (a) the product of C multiplied by the revalued notional pension in respect of the qualifying member;
- (b) the total amount of any annual increases which the scheme manager considers could have been paid, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11), from the relevant date until the earlier of—
  - (i) the day on which the transfer notice is given; and
  - (ii) the day on which the qualifying member died;
- (c) where the qualifying member died after the calculation date but before the day on which the transfer notice was given, double the total amount of any annual increases which the scheme manager considers could have been paid to a survivor (on the basis that there is one survivor) from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11); and
- (d) the total amount of any annual increases to which the qualifying member was entitled in accordance with paragraph 6 on the day on which the qualifying member died,

less, where the qualifying member was a qualifying member to whom regulation 17D applied, the amount by which the qualifying member’s ill health payment has been commuted;

“R” means the revalued notional pension as construed in accordance with regulation 17A(10);

“S” means—

- (a) where paragraph 3(2) applies, the total amount of annual increases to which any survivor was entitled under this Schedule on the day on which the survivor died;
- (b) where sub-paragraph (4) of paragraph 4 applies, the total amount of annual increases to which any survivor was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred; and
- (c) in all other cases, nil;

“relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an ill health payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary became entitled to an ill health payment after the calculation date and prior to receiving a payment from the scheme, the date on which the beneficiary became so entitled; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(3) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the ill health payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(4) Sub-paragraph (6) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (5) is higher or lower than the sum of—

- (a) the revalued notional pension, or the survivor notional pension, as the case may be; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d);
  - (ii) the revaluation amount determined in accordance with regulation 17A(11); and
  - (iii) the proportion of that year which falls after the 1<sup>st</sup> January.

(5) For the purposes of sub-paragraph (4), the period is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
  - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
- (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

(6) Where this sub-paragraph applies, the scheme manager may—

- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (4) (a) and (b) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant.

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### **Amount of an ill health payment – qualifying members**

2. The ill health payment payable to a qualifying member to whom this Schedule applies shall be—

$$(C \times R) - A + J - B.$$

### **Amount of an ill health payment - survivors**

3.—(1) Where this Schedule applies, the ill health payment payable to a survivor of a qualifying member shall be—

(a) where regulation 17A(8)(e) applies, the amount which is the sum of—

(i) the survivor notional pension determined in respect of that survivor; and

(ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and

(b) where regulation 17A(8)(c) or (d) applies—

(i) where sub-paragraph (ii) does not apply—

$$\frac{Q}{2} + S;$$

(ii) where the qualifying member was a party to a polygamous marriage—

$$\frac{(0.5 \times Q) + S}{N}.$$

(2) Where a survivor to whom sub-paragraph (1)(b)(ii) applies dies, the ill health payment payable to all remaining survivors of the qualifying member shall be redetermined with effect from the day after the day on which the survivor died.

### **Amount of an ill health payment - surviving dependants**

4.—(1) Where this Schedule applies, the ill health payment payable to a surviving dependant of a qualifying member shall be—

(a) where regulation 17A(8)(e) applies, the amount which is the sum of—

(i) the survivor notional pension determined in respect of that surviving dependant; and

(ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and

(b) where regulation 17A(8)(b) to (d) applies, determined in accordance with sub-paragraphs (2) to (4).

(2) Where an ill health payment is also payable to a survivor of a qualifying member and—

(a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{0.5 \times Q}{2} + D;$$

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(b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(0.5 \times Q) + D}{N}$$

(3) Where an ill health payment is not payable to a survivor of a qualifying member and—

(a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{Q}{2} + S + D;$$

(b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{Q + S + D}{N}$$

(4) Where—

- (a) a survivor of a qualifying member dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member,

the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

### **Rounding**

5. Where the amount of an ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

### **Annual increases to an ill health payment**

6.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an amount determined in accordance with this Schedule shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date; and
- (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) the product of X multiplied by (C x V);
- (b) where the beneficiary is a qualifying member, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination

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under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11);

- (c) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given;
- (d) where the beneficiary is a survivor or a surviving dependant of a qualifying member who died on or after the calculation date but before the day on which the transfer notice was given, the sum of—
  - (i) the product of X multiplied by the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11); and
  - (ii) the total amount of any annual increases which the scheme manager considers could have been paid to the beneficiary from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11);
- (e) where the beneficiary is the survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the product of X multiplied by the sum of—
  - (i) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11); and
  - (ii) the total amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day on which the qualifying member died; and
- (f) any annual increases to which the beneficiary is entitled under this Schedule immediately before the indexation date;

“post-1997 service” means—

- (a) pensionable service (either actual or notional) which occurred on or after 6th April 1997; or
- (b) where the pension was payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“V” means—

- (a) where the beneficiary is a qualifying member or a survivor or surviving dependant of a qualifying member who died on or after the calculation date—
  - (i) where the qualifying member is not a qualifying member to whom regulation 17D applied, so much of the revalued notional pension as is attributable to post-1997 service; or
  - (ii) where the qualifying member is a qualifying member to whom regulation 17D applied, so much of the sum of R-A as is attributable to post-1997 service; and

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- (b) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, so much of the survivor notional pension as is attributable to the qualifying member's post 1997 service;

“W” means the amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day on which the qualifying member died;

“X” means—

- (a) 1, where the beneficiary is the qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined;
- (b) 0.5, where the beneficiary is a survivor who is neither—
  - (i) a survivor to whom paragraph 3(1)(b)(ii) applies; nor
  - (ii) a survivor in respect of whom a survivor notional pension has been determined;
- (c) the product of 0.5 divided by Y, where the beneficiary is a survivor to whom paragraph 3(1)(b)(ii) applies;
- (d) the product of 1 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and the qualifying member does not have a survivor; or
- (e) the product of 0.5 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and an annual payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

(3) In determining the underlying rate where a qualifying member is a qualifying member to whom regulation 17D applied, the amount of R-A that is attributable to post-1997 service is determined by attributing the sum to pre-1997 service and post-1997 service in the same proportions as the revalued notional pension would have been attributed had regulation 17D not applied.

## SCHEDULE 6

Regulation 17A(8)(f) to (i)

Determination of ill health payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010

### Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of an ill health payment payable to a beneficiary to whom regulation 17A(8)(f) to (i) applies.

(2) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the ill health payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

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- (3) Sub-paragraph (5) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (4) is higher or lower than the sum of—
- (a) the notional pension, or the survivor notional pension, as the case may be; and
  - (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
    - (i) the determination under regulation 27(1)(d); and
    - (ii) the proportion of that year which falls after the 1<sup>st</sup> January.
- (4) For the purposes of sub-paragraph (3), the period is the period from—
- (a) the earlier of—
    - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
    - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
  - (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),
- until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.
- (5) Where this sub-paragraph applies, the scheme manager may—
- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the notional pension or survivor notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
    - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
    - (iv) such other matters as the scheme manager considers relevant; and
  - (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (3) (a) and (b) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the notional pension or survivor notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
    - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
    - (iv) such other matters as the scheme manager considers relevant.
- (6) In this Schedule—
- “relevant date” means the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4); and



“relevant proportion”, in relation to a beneficiary, means the proportion of the notional pension which relates to the beneficiary.

(7) Where—

- (a) the beneficiary is a qualifying member to whom regulation 17H applied; and
- (b) the scheme manager made a determination in accordance with paragraph 1(2) or (5) of Schedule 7, to reduce the payment under that Schedule by any amount,

the scheme manager shall reduce the amount of the ill health payment payable under this Schedule by the same amount.

### **Qualifying members**

2. Where this Schedule applies, the ill health payment payable to a qualifying member shall be the sum of—

- (a) the notional pension determined in respect of the qualifying member; and
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2), (5) or (7).

### **Survivors**

3. Where this Schedule applies, the ill health payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17A(8)(g) applies, the amount which is the sum of —
  - (i) the survivor notional pension determined in respect of that survivor; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given,less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);

- (b) where regulation 17(8)(h) applies, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension, from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and

- (c) where regulation 17A(8)(i) applies, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and

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- (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died.

### **Surviving Dependants**

4. Where this Schedule applies, the ill health payment payable to a surviving dependant of a qualifying member shall be—

- (a) where regulation 17A(8)(g) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that surviving dependant; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given, less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);
- (b) where regulation 17A(8)(h) applies, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;
  - (ii) the relevant proportion of the amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension, from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and
- (c) where regulation 17A(8)(i) applies, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and
  - (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died.

### **Redetermination**

5.—(1) This paragraph applies where the notional pension or survivor notional pension includes an amount in respect of an amount which under scheme rules—

- (a) would be payable for a period which is shorter than the period in respect of which the remainder of a pension would be payable; or
- (b) would be payable as a result of a qualifying member dying within a period specified in scheme rules which begins on the day on which the member became entitled to a pension from the scheme, or the day on which the pension was first paid.

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to the beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable, or the period referred to within sub-paragraph (1)(b) would have ended.

(3) When redetermining an ill health payment under sub-paragraph (2), the scheme manager shall redetermine the notional pension or survivor notional pension having regard to the amount referred to in sub-paragraph (1).

### **Rounding**

6. Where the amount of an ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

### **Annual increases to an ill health payment**

7.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, where the asset share determined in respect of the beneficiary was sufficient to be applied to the amounts referred to in regulation 27(7)(a)(ii) or (10)(a)(ii), a beneficiary shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date; and
- (b) 2.5%; and

“underlying rate” means—

- (a) where the beneficiary is a qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the aggregate of—
  - (i) so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) or (10)(a)(ii) could be increased;
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension, or survivor notional pension, as the case may be, from the relevant date until the day on which the transfer notice is given; and
  - (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;
- (b) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the aggregate of—
  - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid to the qualifying member on the notional pension from the relevant date until the day on which the transfer notice is given;
  - (iii) the relevant proportion of any annual increases to which the qualifying member was entitled in accordance with this Schedule on the day on which the qualifying member died; and

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- (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; and
  - (c) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the calculation date but prior to the day on which the transfer notice was given, the aggregate of—
    - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
    - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the relevant date until the day on which the qualifying member died;
    - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and
    - (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date.
- (3) In the definition of “underlying rate” in sub-paragraph (2), the reference to annual payments is to the amount of annual payment prior to any reduction made by the scheme manager under paragraph 1(2) or (5).

## SCHEDULE 7

Regulations 17G(2) and 17H(2)

### Determination of payments to early retirees and other beneficiaries

#### Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of a payment payable to a person to whom regulation 17G or 17H applies.

(2) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3) Sub-paragraph (5) applies where the scheme manager is satisfied that the amount of interim pension paid to a beneficiary in respect of any year in the period determined in accordance with sub-paragraph (4) is higher or lower than the sum of—

- (a) the notional pension; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d); and
  - (ii) the proportion of that year which falls after the 1<sup>st</sup> January.

(4) For the purposes of sub-paragraph (3), the period is the period from the later of—

- (a) the day on which the beneficiary began to receive a payment from the scheme; and
- (b) the day on which the qualifying pension scheme began to be wound up,

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

- (5) Where this sub-paragraph applies, the scheme manager may—
- (a) determine the amount by which the payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid; and
    - (iii) such other matters as the scheme manager considers relevant; and
  - (b) where the interim pension paid in respect of any year is lower than the sum referred to in sub-paragraph (3) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid; and
    - (iii) such other matters as the scheme manager considers relevant.

**Amount of the payment where regulation 17G applies**

2. Where a person is entitled to a payment in accordance with regulation 17G, the amount of that payment shall be sum of—
- (a) the amount of the notional pension determined in respect of that person; and
  - (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the day on which the scheme's liability to provide a pension or other benefit to the person arose until the day on which the transfer notice was given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5).

**Amount of the payment where regulation 17H applies**

3. Where a qualifying member is entitled to a payment in accordance with regulation 17H, the amount of that payment shall be the sum of—
- (a) the notional pension in relation to the qualifying member; and
  - (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the later of—
    - (i) the date on which the qualifying member began to receive a present payment from the scheme; and
    - (ii) the date on which the scheme began to be wound up,until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5).

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### **Annual increases**

4.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, where the asset share determined in respect of a person to whom an amount is payable in accordance with this Schedule was sufficient to be applied to annual increases, that person shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where that person first became entitled to a payment in accordance with regulation 17G or 17H during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date; and
- (b) 2.5%;

“relevant date” means—

- (a) in the cases of a person to whom regulation 17G applies, the day on which the scheme’s liability to provide a pension or other benefit to the person arose; and
- (b) in the case of a person to whom regulation 17H applies, the later of—
  - (i) the day from which the beneficiary began to receive a present payment from the scheme; and
  - (ii) the day on which the scheme began to be wound up.

“underlying rate” means—

the aggregate of—

- (a) (i) where regulation 17G applies, so much of the payment as the scheme manager determined under regulation 27(7)(b)(ii) could be increased; and
  - (ii) where regulation 17H applies, so much of the payment as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given; and
- (c) any annual increases to which the person is entitled in accordance with sub-paragraph (1) immediately before the indexation date.

(3) The reference to payments in the definition of “underlying rate” in sub-paragraph (2) is to the amount of payment prior to any reduction made by the scheme manager under paragraph 1(2) or (5).”

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) (“the FAS Regulations”) which allow for payments to be made to, or in respect of, members or former members of certain occupational pension schemes where the liabilities of the scheme to those members have not been satisfied in full.

They also amend the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189, as amended), the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994, as amended) and the Financial Assistance Scheme (Appeals) Regulations (S.I. 2005/3273, as amended) in relation to the financial assistance scheme (“the FAS”).

Part 2 and Schedules 1 and 2 amend the FAS Regulations. In particular they—

- (a) make amendments so that the Regulations extend to members and former members in respect of whom the scheme’s liabilities could be satisfied in full if the scheme were to wind up in the usual way (regulation 6);
- (b) place certain limitations on qualifying schemes making transfer payments, winding up lump sum payments and trivial commutation payments in respect of defined benefit pension rights (regulation 15(b));
- (c) make provision for the scheme manager to require a valuation of the assets and liabilities of certain qualifying pension schemes (Schedule 1 – inserted regulations 21 to 26);
- (d) make provision for these schemes to transfer their assets to the Secretary of State after a valuation has been completed (through modification of section 161 of, and Schedule 6 to, the Pensions Act 2004 in regulation 15);
- (e) make provision for the scheme manager to calculate a notional pension that could be paid to, or in respect of, qualifying members using the scheme’s assets (Schedule 1 – inserted regulations 27 and 28);
- (f) amend the provisions of the FAS Regulations governing how payments are to be calculated (including the insertion of 5 new Schedules to cover how payments are to be calculated in different circumstances) to take account of the notional pension that has been calculated (regulations 8, 9, 16 and 17 and Schedule 2);
- (g) allow certain members to commute a part of their payment for a lump sum (regulation 10);
- (h) allow for the scheme manager to make payments in respect of death benefit guarantees in certain cases (regulation 11).

Part 3 amends the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005. In particular it amends the information which must be provided to the scheme manager (or to a person authorised by the scheme manager) to support the changes being made to the FAS and provides the scheme manager with the discretion to waive information requirements where circumstances make them unnecessary or burdensome.

Part 4 amends the Financial Assistance Scheme (Internal Review) Regulations 2005 and the Financial Assistance Scheme (Appeals) Regulations 2005 in order to ensure that new determinations created by the changes to the FAS are subject to internal review and appeals procedures. These include determinations in relation to the valuation of a scheme, determinations in relation to the

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amount of a lump sum that may be taken, determinations in relation to indexation and determinations in relation to eligibility for a payment.

Before making these Regulations the Secretary of State consulted such persons as the Secretary of State considered appropriate.

An impact assessment has been published for this instrument and is available on the DWP website: <http://www.dwp.gov.uk>.