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STATUTORY RULES OF NORTHERN IRELAND

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**2009 No. 188**

The Health and Personal Social Services  
(Superannuation Scheme and Injury Benefits)  
and Health and Social Care (Pension Scheme)  
(Amendment) Regulations (Northern Ireland) 2009

PART 3

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

**Amendment of the 2008 Regulations**

**13.** The Health and Social Care (Pension Scheme) Regulations (Northern Ireland) 2008(1) shall be amended as provided by regulations 14 to 78.

**Amendment of regulation 6**

**14.** In regulation 6 (Interpretation: general)—

- (a) in the definition of “member” after “active member,”, insert “a non-contributing member.”;
- (b) at the appropriate place in the alphabetical order, insert—
  - ““non-contributing member” means a member who—
  - (a) is under the age of 75 and in HSC employment;
  - (b) is no longer required to make contributions to the Scheme in accordance with regulation 27(1); but
  - (c) will be entitled to a pension under these Regulations—
    - (i) on ceasing to be employed in HSC employment and making a claim for the pension, or
    - (ii) upon reaching age 75;”.

**Amendment of regulation 14**

**15.** In paragraph (7)(a) and (b) of regulation 14 (Pensionable pay: breaks in service) for “pay”, substitute “earnings”.

### **Amendment of regulation 15**

16.—(1) Regulation 15 (Meaning of “reckonable pay”: general) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1)—

(a) at the end of sub-paragraph (a), omit “or”;

(b) at the end of sub-paragraph (b), add—

“; or

(c) a non-contributing member.”.

(3) In paragraph (5)—

(a) at the end of sub-paragraph (a)(i), omit “and”;

(b) after sub-paragraph (a)(ii), add—

“(iii) in a case within paragraph (1)(c), the member’s last day of pensionable service.”.

### **Amendment of regulation 22**

17. In regulation 22 (Restrictions on eligibility: general) after paragraph (6), add—

“(7) A person is not eligible to be an active member of the Scheme in any future employment if the person—

(a) ceases to be entitled to a tier 1 ill-health pension under regulation 52; and

(b) becomes entitled to a tier 2 ill-health pension under that regulation on the date the Department makes a determination under regulation 53(3).

This is subject to paragraph (8).

(8) A person to whom paragraph (7) applies is eligible to be an active member of the Scheme in any further employment after the first anniversary of that person’s first day of such employment following the date of the Department’s determination under regulation 53.”.

### **Amendment of regulation 28**

18. For paragraph (2) of regulation 28 (Members' contribution rate), substitute—

“(2) Subject to paragraph (3), for the 2009–2010 scheme year and each subsequent scheme year a member’s contribution rate for that period is the percentage specified in column 2 of the following table in respect of the corresponding pensionable pay range (where regulation 29 applies) or pensionable earnings range (where regulation 30 applies) specified in column 1 of the table into which the member’s pensionable pay, or as the case may be, pensionable earnings falls.

<i>Column 1</i> <i>Amount of pensionable pay/earnings</i>	<i>Column 2</i> <i>Contribution rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%”

## Amendment of regulation 29

19. For regulation 29 (Employees), substitute—

### “Employees

29.—(1) For the purposes of this regulation—

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

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

This is subject to paragraphs (16) and (17).

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

- (a) a member shall be regarded as being in pensionable employment throughout the previous scheme year regardless of any period in that year during which the member continued to be employed by the same employer but did not make contributions to the scheme;
- (b) for the purposes of calculating the member’s pensionable pay—
  - (i) contributions for any period referred to in sub-paragraph (a) shall be deemed to have been paid,
  - (ii) any additional pensionable pay that the member is treated as having received during an absence from work in accordance with regulation 14 shall be included;
- (c) the amount of pensionable pay determined in accordance with those paragraphs shall be rounded down to the nearest whole pound.

(4) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay received during the previous scheme year.

(5) If a member—

- (a) was in pensionable employment with an employing authority on a part-time basis throughout the previous scheme year;

- (b) paid contributions in respect of that employment at the same percentage rate throughout that previous scheme year; and
- (c) is employed by that authority on the first day of the current scheme year,

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member’s pensionable pay determined by reference to the amount the Department determines would have been paid in respect of a single comparable whole-time employment during the previous scheme year.

(6) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the member’s pensionable pay received during the previous scheme year in respect of the member’s whole-time employment, and
- (ii) the amount the Department determines would have been paid in respect of a single comparable whole-time employment for that period in respect of the member’s part-time employment.

(7) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member’s pensionable pay determined by the formula—

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

where—

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

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

(8) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

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

where—

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

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

(9) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

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

where—

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

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

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

(10) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

(11) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

CWTE is the amount the Department determines would have been paid for that employment during the previous scheme year in respect of a single comparable whole-time employment;

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

(12) If a member—

- (a) commenced pensionable employment with an employing authority during the previous scheme year and has since been employed on both a whole-time and part-time basis;
  - (b) paid contributions in respect of that employment at the same percentage rate from the date that employment commenced to the last day of the previous scheme year; and
  - (c) is employed by that authority on the first day of the current scheme year,
- the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

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

(13) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

(14) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the amount of the member's pensionable pay determined by the formula—

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

where—

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

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

(15) If a member—

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

the member shall pay contributions during the current scheme year at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined by the formula—

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

where—

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

CWTE is the amount the Department determines would have been paid in respect of a single comparable whole-time employment in respect of the member's part-time employment with that employer for the period commencing on the date the member's



contribution rate last changed in that previous scheme year and ending on the last day of that previous scheme year;

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

(16) If, at any time during the current scheme year, a member commences a new employment, the member shall pay contributions in respect of that employment at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20).

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

(a) from the first day of the next pay period immediately following the pay period in which the change is made at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with paragraph (20); and

(b) as if the member's employment had commenced on that date.

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

(a) unplanned changes to that member's duties; or

(b) changes to that member's duties that are unlikely to persist for at least 12 months.

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

(20) Where paragraph (16) or (17) apply the Department shall determine the member's pensionable pay—

(a) by applying the formula—

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

where—

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

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

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

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

- (21) If none of paragraphs (4) to (17) apply—
- (a) the Department must determine the amount of the member's pensionable pay, and in doing so shall, in addition to the matters referred to in paragraph (4) of regulation 28, have regard to the pensionable pay attributable to pensionable employment comparable to the member's employment, prevailing pay scales and prevailing rates of pensionable allowances; and
  - (b) the member shall pay contributions at the rate specified in column 2 of the table in paragraph (2) of regulation 28 in respect of the amount of pensionable pay referred to in column 1 of that table which corresponds to the member's pensionable pay determined in accordance with sub-paragraph (a).

- (22) If, during the current scheme year—
- (a) a payment is made to a member in respect of work that was undertaken by that member—
    - (i) during an earlier scheme year, or
    - (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraph (16) or (17), or
    - (iii) in part during the scheme year referred to in head (i) and in part during the period referred to in head (ii);
  - (b) that member is in pensionable employment with the employing authority making that payment on the day that it is made; and
  - (c) that payment does not exceed £150,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the current scheme year, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

- (23) If, during the current scheme year—
- (a) a payment is made to a member in respect of work that was undertaken by that member—
    - (i) during an earlier scheme year, or
    - (ii) during a period before the percentage rate at which contributions are due from that member changed by virtue of paragraph (16) or (17), or
    - (iii) in part during the scheme year referred to in head (i) and in part during the period referred to in head (ii);
  - (b) that member is not in pensionable employment with the employing authority making that payment on the day that it is made; and
  - (c) that payment does not exceed £150,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to the member in respect of work undertaken by that member in the scheme year in which the member's pensionable employment with that employing authority ceased, and
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the member's employment ceased.

(24) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;
- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made; and
- (c) on the day that payment is made that member is in pensionable employment with the employing authority by which that payment is made,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year,
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day that the payment is made.

(25) If, during the current scheme year—

- (a) a payment is made to a member that is determined by that member's employing authority to have been made in respect of work done during unsocial hours;
- (b) that payment is made in respect of work undertaken by that member during a period falling within the two calendar months immediately preceding the calendar month in which that payment is made, and
- (c) on the day that payment is made that member is not in pensionable employment with the employing authority by which that payment is made,

for all purposes under the scheme—

- (i) that payment shall be treated as if it has been made to that member in respect of work undertaken by that member in the current scheme year,
- (ii) contributions shall be payable in respect of that payment at the rate applicable to the member on the day the member's pensionable employment with that employing authority ceased as determined in accordance with this regulation.

(26) In any case where paragraph (16) applies and it is apparent at the time when the person becomes an active member in an employment under this Part the person's pensionable pay in that employment includes any amount that is variable, that amount is to be taken as such amount as the employing authority consider appropriate for the 2008/09 scheme year and, in the case of a member who works part time, is the variable amount that would be paid in respect of a comparable whole time employment.

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

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

### **Amendment of regulation 30**

**20.** For regulation 30 (Part-time employees), substitute—

**“Non-GP providers**

**30.**—(1) If, in respect of a scheme year, a member who is a non-GP provider—

- (a) has certified their pensionable earnings in accordance with regulation 136 and forwarded a record of those earnings to the host Board; or
- (b) was not required to certify their earnings in accordance with that regulation but the host Board has the figure that represents the non-GP provider’s pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) of regulation 28, in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the certified or final pensionable earnings from all non-GP provider sources and any additional pensionable earnings the non-GP provider is treated as having received during a break in service in accordance with regulation 14.

(2) If paragraph (1) does not apply to a non-GP provider in respect of a scheme year, that non-GP provider shall pay contributions at the rate in column 2 of the table in paragraph (2) of regulation 28, which—

- (a) has been agreed between the host Board on the one hand and the non-GP provider on the other hand; or
- (b) corresponds to the non-GP provider’s most recent certified or final pensionable earnings referred to in paragraph (1); or
- (c) corresponds to the host Board’s estimate of the non-GP provider’s pensionable earnings from all non-GP provider sources for that year.

This is subject to paragraph (3).

(3) If paragraph (2) applies to a non-GP provider in respect of a scheme year and paragraph (1) (a) or (b) is subsequently satisfied in respect of that scheme year, that non-GP provider shall pay contributions at the rate determined in accordance with paragraph (1).

(4) A host Board may adjust a non-GP provider’s contribution rate for any scheme year determined in accordance with paragraph (2)—

- (a) by agreement between the host Board on the one hand and the non-GP provider on the other hand; or
- (b) without such agreement, if the host Board is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with that paragraph.

(5) If a member is in non-GP provider service and concurrently in HSC employment in respect of which the member is liable to pay contributions in accordance with regulation 29, contributions payable in respect of the member’s non-GP provider service shall be determined under this regulation and contributions payable in respect of the member’s HSC employment shall be determined under regulation 29.

(6) In determining the contributions payable in accordance with this regulation, a host Board must take account of pensionable earnings as a non-GP provider from all non-GP provider sources, including any pensionable earnings as a non-GP provider determined by another host Board.

(7) An employing authority that is not a host Board shall, in respect of any pensionable earnings it pays to a non-GP provider, take advice from any relevant host Board in determining the contributions payable in accordance with this regulation.

(8) If, apart from this paragraph, the earnings for a scheme year in respect of a member's non-GP provider service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

#### **Amendment of regulation 46**

**21.**—(1) Regulation 46 (Pension credit members) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (2) at the end, add (as full-out words) “This is subject to paragraphs (5) and (8)”.

(3) After paragraph (4), add—

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

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

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

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

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

(8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Department, the pension credit member—

- (a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004;
- (b) had previously been engaged in regular employment but is now permanently incapable of engaging in such employment due to mental or physical infirmity; and
- (c) has claimed the pension.

(9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3).

(10) For the purpose of paragraph (8), the Department may require whatever medical evidence that it considers necessary.”.

#### **Amendment of regulation 48**

**22.** In paragraph (3)(b) of regulation 48 (Early payment of pensions with actuarial reduction) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 49**

**23.** In paragraphs (1) and (9)(b) (twice) of regulation 49 (Partial retirement (members aged at least 55)) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 50**

24. In paragraphs (3) (three times) and (5) of regulation 50 (Increase in pensionable pay following exercise of option under regulation 49) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 51**

25. In paragraph (1) of regulation 51 (Application of regulations 49 and 50 where concurrent part-time employments held) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 52**

26.—(1) Regulation 52 (Early retirement on ill-health (active members)) is amended as provided by paragraphs (2) and (3).

(2) In the heading after “active members”, insert “and non-contributing members”.

(3) In paragraph (2) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 53**

27.—(1) Regulation 53(2) (Re-assessment of entitlement to an ill-health pension determined under regulation 52 ) is amended as provided by paragraphs (2) and (3).

(2) At the end of sub-paragraph (b)(ii) omit “and”.

(3) After sub-paragraph (c), add—

“; and

(d) the member has not become entitled to a tier 2 pension in respect of any later service under regulation 113.”.

### **Amendment of regulation 55**

28. In paragraph (1)(a) of regulation 55 (Early retirement on termination of employment by employing authority) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 57**

29. In paragraph (2)(a) of regulation 57 (Exceptions to requirement that HSC employment must have ceased) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 58**

30.—(1) Regulation 58 (General option to exchange part of pension for lump sum) is amended as provided by paragraphs (2) to (4).

(2) For paragraph (1) substitute—

“(1) A member (other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the Finance Act 2004) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.”.

(3) In paragraph (7) at the end, add (as full-out words) “This is subject to paragraphs (8) and (9).”.

(4) After paragraph (7), add—

“(8) If the pension is an ill-health pension under regulation 52, the option under this regulation may only be exercised by giving notice in writing to the Department in such form as it requires—

- (a) where the member is awarded—
  - (i) a tier 1 pension under paragraph (2) of that regulation, at the time of claiming that tier 1 pension,
  - (ii) a tier 2 pension under paragraph (3) of that regulation, at the time of claiming that tier 2 pension; or
- (b) before such later time as the Department specifies in writing.

(9) If the pension is a tier 2 ill-health pension under regulation 53, in substitution for a tier 1 ill-health pension under regulation 52, the option under this regulation may only be exercised—

- (a) in relation to the difference between the tier 1 pension that ceases to be payable in accordance with paragraph (3) of regulation 53 and the tier 2 pension to which the member becomes entitled under that paragraph; and
- (b) by giving notice in writing to the Department in such form as it requires—
  - (i) at the time of award of the tier 2 pension under that paragraph, or
  - (ii) before such later time as the Department specifies in writing.”.

#### **Amendment of regulation 59**

**31.**—(1) Regulation 59 (Option for members in serious ill-health to exchange whole pension for lump sum) is amended as provided by paragraphs (2) to (5).

- (2) In paragraph (1) after “active member”, insert “, non-contributing member”.
- (3) In paragraph (4) after “active member”, insert “or a non-contributing member”.
- (4) For paragraph (5), substitute—
  - “(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—
    - (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 58 at the appropriate time; and
    - (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 46 after exercising that option, multiplied by 5.”.
- (5) In paragraph (6) after “active member”, insert “or a non-contributing member”.

#### **Omission of regulation 61**

**32.** Omit regulation 61 (Pension credit member’s rights).

#### **Amendment of regulation 65**

**33.** In paragraphs (2)(a) and (4)(b) of regulation 65 (Dual capacity membership) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 67**

**34.** In paragraph (1) of regulation 67 (Surviving adult dependants' pensions) after “active member”, insert “, a non-contributing member”.

### **Amendment of regulation 69**

**35.**—(1) Regulation 69 (Amount of pensions under regulation 67: active members) is amended as provided by paragraphs (2) and (3).

(2) In the heading after “active”, insert “and non-contributing”.

(3) For paragraph (1), substitute—

“(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 67 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to—

- (a) in the case of a deceased active member, the rate of the member’s pensionable pay at the time of death;
- (b) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.”.

### **Amendment of regulation 70**

**36.** In paragraph (3) of regulation 70 (Amount of pensions under regulation 67: pensioner members) for “paragraph (1)”, substitute “paragraphs (1) and (2)”.

### **Amendment of regulation 73**

**37.** In paragraph (3) of regulation 73 (Re-employed pensioners: adult survivor pensions in initial period) for sub-paragraphs (a) and (b), substitute—

- “(a) in the case of—
- (i) a deceased active member, the rate of the deceased’s pensionable pay at the time of death, or
  - (ii) a deceased non-contributing member, the rate of the deceased’s reckonable pay on the deceased’s last day of pensionable service; and
- (b) the rate of the deceased member’s pension payable at the time of death after taking account of any reduction in the rate of the pension under Chapter 8 (abatement).”.

### **Amendment of regulation 76**

**38.**—(1) Regulation 76 (Amount of children’s pension under regulation 74: deceased active members) is amended as provided by paragraphs (2) to (6).

(2) In the heading after “deceased active members” insert, “and deceased non-contributing members”.

(3) In paragraph (1) after “active” insert, “, or a non-contributing”.

(4) For paragraph (4), substitute—

“(4) For this purpose “relevant service” means—

- (a) in the case of an active member, the greater of—
  - (i) the pensionable service the deceased was entitled to count on the date of death, increased by the enhancement period (if any) that would have applied for the purposes of regulation 52(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death, and
  - (ii) 10 years’ pensionable service;



(b) in the case of a non-contributing member, the pensionable service that the deceased was entitled to count on the date of death.”.

(5) In paragraph (6) for “equal to the rate of the deceased’s pensionable pay at the date of death.”, substitute—

“equal to—

- (i) in the case of a deceased active member, the rate of the deceased’s pensionable pay at the date of death, and
- (ii) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.”.

(6) In paragraph (7) for “equal to the rate of the deceased’s pensionable pay at the date of death.”, substitute—

“equal to—

- (i) in the case of a deceased active member, the rate of the deceased’s pensionable pay at the date of death, and
- (ii) in the case of a deceased non-contributing member, the rate of the deceased’s reckonable pay.”.

#### **Amendment of regulation 77**

**39.** In paragraph (1) of regulation 77 (Amount of children’s pension under regulation 74: deceased pensioner members) after “active member”, add “or a non-contributing member”.

#### **Amendment of regulation 78**

**40.** In paragraphs (1) and (3)(a) of regulation 78 (Amount of children’s pension under regulation 74: deceased deferred members) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 79**

**41.** In paragraph (3) of regulation 79 (Amount of children’s pension under regulation 74: recent leavers) for sub-paragraph (a), substitute—

- “(a) “the basic death pension” means 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to—
  - (i) a pension under regulation 74(5) on the date of death, or
  - (ii) if greater, the amount that the member’s pension would have been if it had been based on 10 years’ pensionable service (disregarding any additional pension), and”.

#### **Amendment of regulation 81**

**42.—(1)** Regulation 81 (Amount of children’s pension under regulation 74: re-employed pensioners) is amended as provided by paragraphs (2) to (4).

(2) In paragraph (1) after “active member”, insert “or a non-contributing member”.

(3) For paragraph (2) (a), substitute—

“(a) in the case of—

- (i) a deceased active member, the rate of the deceased’s pensionable pay at the date of death, or

(ii) a deceased non-contributing member, the rate of the deceased's reckonable pay, and".

(4) In paragraph (5)—

(i) in sub-paragraph (a) after "active member", insert "or a non-contributing member",

(ii) in sub-paragraph (b) after "active members", insert "or non-contributing members".

### **Amendment of regulation 83**

**43.**—(1) Regulation 83 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 49 employments)) is amended as provided by paragraphs (2) to (5).

(2) In paragraph (1) after "active member", insert "or a non-contributing member".

(3) In paragraph (2)—

(a) after "active member", insert "or a non-contributing member";

(b) at the end, insert (as full-out words) "This is subject to regulations 86A and 87.".

(4) In paragraph (3) for "is not an active member", substitute "was not an active member or non-contributing member".

(5) In paragraph (8)(a) for "is an active member", substitute "was an active member or a non-contributing member".

### **Amendment of regulation 84**

**44.**—(1) Regulation 84 (Amount of lump sum: dual capacity members (disregarding regulation 49 employments)) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (1)(a) after "active member", insert "or a non-contributing member".

(3) In paragraph (2) for sub-paragraph (a), substitute—

“(a) five times the annual rate of pension—

(i) payable under regulation 52(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65,

(ii) payable under regulation 45 (normal retirement pensions), if the deceased had reached the age of 65,

to which the member would have been entitled—

(aa) in the case of a deceased active member, at the member's date of death, or

(bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service; and”.

### **Amendment of regulation 85**

**45.**—(1) Regulation 85 (Amount of lump sum: dual capacity members: members with pensions under regulation 49) is amended as provided by paragraphs (2) to (4).

(2) In paragraph (1)—

(a) In sub-paragraph (a) for "is an active member", substitute "was an active member or a non-contributing member";

(b) In sub-paragraph (b) for "is", substitute "was".

(3) In paragraph (2)(a) for "final pensionable pay", substitute "reckonable pay".

(4) In paragraph (5) (in the definition of "DPS") after "active member", insert "or a non-contributing member".

### **Amendment of regulation 113**

**46.**—(1) Regulation 113 (Re-employed tier 1 ill-health pensioners) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (4) at the end, insert (as full-out words) “This is subject to paragraph (5).”.

(3) After paragraph (4) add—

“(5) If the re-employed member—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier service;
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier service in accordance with regulation 53(3); and
- (c) on the termination of the later service, the member becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of that later service,

the re-employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are—

- (a) a tier 2 ill-health pension paid in accordance with regulation 53 in respect of the member’s earlier service; and
- (b) a tier 1 ill-health pension in respect of the member’s later service.”.

### **Amendment of regulation 128**

**47.** In paragraph (2) of regulation 128 (Commutation of small pensions), omit sub-paragraph (d).

### **Amendment of regulation 132**

**48.**—(1) Regulation 132 (Interest on late payment of benefits and refunds of contributions) is amended as provided by paragraphs (2) to (6).

(2) In paragraph (2) after “interim” insert, “or substitute”.

(3) For paragraph (3), substitute—

“(3) The Department must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid (“the unpaid amount”) to the person to whom it should have been paid unless the Department is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”.

(4) In paragraph (5) after “unpaid amount”, insert “(other than an unpaid amount in respect of an interim or substitute award)”.

(5) For paragraph (6), substitute—

“(6) The due date for an unpaid amount—

- (a) referred to in paragraph (5) in respect of which the Department was not in possession of all the information necessary for the calculation of the amount of the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;

(b) in respect of an interim or substitute award,

shall be the first day on which the Department was in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”.

(6) In paragraph (7)—

- (a) for “interim award” substitute “interim or substitute award”;

- (b) at the end of sub-paragraph (a), omit “and”;
- (c) at the end of sub-paragraph (b), add—
  - “; and
  - (c) any amount paid that increases the amount of an earlier payment due to the payment of a tier 2 ill-health pension under regulation 52 paid to a member in substitution for a tier 1 ill-health pension under that regulation following a determination by the Department under regulation 53.”.

### **Amendment of regulation 136**

**49.** For regulation 136 (Employing authority and certain member record keeping contribution estimates), substitute—

**“Employing authority and certain member record keeping and contribution estimates**

**136.**—(1) As regards a member who is a non-GP provider who derives practitioner income from the contracts, agreements or payments referred to in regulation 13(6), in respect of each scheme year, the member shall provide each relevant host Board with a certificate of their pensionable earnings based on—

- (a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and
- (b) the return that member has made to Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards a GMS practice or an APMS contractor, in respect of each scheme year, the practice or contractor shall provide the Department with a statement of estimated pensionable earnings in respect of any non-GP provider that is an APMS contractor or who assists in the provision of HSC services provided by that GMS practice or an APMS contractor, at least 1 month before the beginning of that Scheme year.

(3) If, in respect of a scheme year, a non-GP provider has failed to comply with the requirements of paragraph (1), the non-GP provider’s pensionable earnings for that scheme year shall be zero.

This is subject to paragraph (4).

- (4) If, in respect of a scheme year—
  - (a) a non-GP provider has failed to comply with the requirements of paragraph (1);
  - (b) a benefit is payable for, or in respect of their non-GP provider service; and
  - (c) the non-GP provider’s employing authority is in possession of a figure representing all or part of the non-GP provider’s pensionable earnings for that year,

the Department may treat that figure as the amount of the non-GP provider’s pensionable earnings for that year.

- (5) If, in respect of a scheme year, a non-GP provider—
  - (a) dies without complying with the requirements of paragraph (1); or
  - (b) is, in the opinion of the Department, unable to look after the non-GP provider’s own affairs by reason of illness or lack of capacity,

the Department may require that non-GP provider’s personal representatives to provide the relevant certificate—

- (i) within the period referred to in paragraph (1), or
- (ii) within such other period as the Department should permit.

(6) All employing authorities under this Part of the regulations shall, for each scheme year—

- (a) provide the Department with a statement of estimated total contributions due to the Scheme under regulation 27 (Contributions by members) and 31 (Contributions by employing authorities: general); and
- (b) maintain records of contributions to the Scheme made under regulations 27 and 31.

(7) The statement referred to in paragraph (6)(a) shall be provided to the Department and no later than 2 months after the end of each scheme year.

(8) Except where the Department waives such requirement, an employing authority shall provide the Department with a statement of contributions to the Scheme recorded in accordance with paragraph (6)(b) no later than 2 months after the end of each scheme year.

(9) The certificates and statements referred to in this regulation—

- (a) shall be in such form as the Department shall from time to time require;
- (b) may be provided to the Department in such manner as it may from time to time permit.

(10) A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment or of a disturbance in the functioning of his mind or brain.”.

#### **Amendment of regulation 137**

**50.** In regulation 137 (Interpretation of Part 3: general)—

- (a) in the definition of “member” after “active member,”, insert “a non-contributing member,”;
- (b) at the appropriate place in the alphabetical order, insert—
  - ““non-contributing member” means a member who—
  - (a) is under the age of 75 and in HSC employment;
  - (b) is no longer required to make contributions to the Scheme in accordance with regulation 160(1); but
  - (c) will be entitled to a pension under these Regulations—
    - (i) on ceasing to be employed in HSC employment and making a claim for the pension, or
    - (ii) upon reaching age 75;”.

#### **Amendment of regulation 154**

**51.** In regulation 154 (Restrictions on eligibility: general) after paragraph (5), add—

- “(6) A person is not eligible to be an active member of the Scheme in any future employment if the person—
  - (a) ceases to be entitled to a tier 1 ill-health pension under regulation 182; and

- (b) becomes entitled to a tier 2 ill-health pension under that regulation on the date the Department makes a determination under regulation 183(3).

This is subject to paragraph (7).

(7) A person to whom paragraph (6) applies is eligible to be an active member of the Scheme in any further employment after the first anniversary of that person's first day of such employment following the date of the Department's determination under regulation 183."

### **Amendment of regulation 161**

**52.** For regulation 161 (Members' contribution rate), substitute—

#### **“Members' contribution rate**

**161.**—(1) Contributions under regulation 161(1) must be paid in accordance with the following paragraphs.

(2) Subject to paragraph (3), for the 2009–2010 scheme year and each subsequent scheme year, a member's contribution rate is the percentage specified in Column 2 of the following table in respect of the corresponding pensionable earnings band specified in Column 1 of the Table into which the member's earnings fall.

Table

<i>Column 1</i> <i>Pensionable earnings band</i>	<i>Column 2</i> <i>Contribution percentage rate</i>
Up to £20,224	5%
£20,225 to £66,789	6.5%
£66,790 to £105,318	7.5%
£105,319 to any higher amount	8.5%

(3) The Department may, with the consent of the Department of Finance and Personnel, make a determination substituting any or all of the earnings bands or contribution percentage rates specified in the table in paragraph (2) with effect from a date specified in the determination.

(4) Before making a determination under paragraph (3), the Department must consider the advice of the Scheme actuary.

- (5) If, in respect of a scheme year, a practitioner (other than a dentist performer) has—
- (a) certified their pensionable earnings in accordance with regulation 260 and forwarded a record of those earnings to the host Board; or
  - (b) was not required to certify their earnings in accordance with that regulation but the host Board has the figure that represents the practitioner's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (i) the certified or final pensionable earnings from all practitioner sources,
- and

(ii) any additional pensionable earnings the practitioner (other than a dentist performer) is treated as having received during a break in service in accordance with regulation 144.

(6) If paragraph (5) does not apply to a practitioner (other than a dentist performer) in respect of a scheme year, contributions are payable for that scheme year at the rate in column 2 of the table in paragraph (2), which—

- (a) has been agreed between the host Board on the one hand and the practitioner on the other hand; or
- (b) corresponds to the practitioner's most recent certified or final pensionable earnings referred to in paragraph (5); or
- (c) corresponds to the host Board's estimate of the practitioner's pensionable earnings from all practitioner sources for that year.

This is subject to paragraph (7).

(7) If paragraph (6) applies to a practitioner (other than a dentist performer) in respect of a scheme year and paragraph (5)(a) or (b) is subsequently satisfied in respect of that scheme year, that practitioner (other than a dentist performer) shall pay contributions at the rate determined in accordance with paragraph (5).

(8) If, for any scheme year, a dentist performer has—

- (a) certified their pensionable earnings in accordance with regulation 260 and forwarded a record of those earnings to the host Board; or
- (b) was not required to certify their earnings in accordance with that regulation but the host Board has the figure that represents the dentist performer's pensionable earnings for that scheme year,

contributions payable for that scheme year, shall be those specified in column 2 of the table in paragraph (2) in respect of the amount of pensionable earnings referred to in column 1 of that table which corresponds to the aggregate of—

- (i) certified or final pensionable earnings from all dentist performer sources, up-rated according to the formula—

$$(PE / NDPS) \times 365$$

where—

PE is the certified or final amount of dentist performer's pensionable earnings from all dentist performer sources for that year;

NDPS is the number of days of dentist performer service from the date the dentist performer service commenced in the scheme year to the end of the scheme year, and

- (ii) any additional pensionable earnings the dentist performer is treated as having received during a break in service in accordance with regulation 144.

(9) If paragraph (8) does not apply to a dentist performer in respect of a scheme year, that dentist performer shall pay contributions at the rate in column 2 of the table in paragraph (2), which—

- (a) has been agreed between the host Board on the one hand and the dentist performer on the other hand; or
- (b) corresponds to the dentist performer's most recent certified or final superannuable earnings referred to in paragraph (8); or

- (c) corresponds to the host Board's estimate of the dentist performer's pensionable earnings from all dentist performer sources for that year up-rated according to the formula referred to in paragraph (8) .

This is subject to paragraph (10).

(10) If paragraph (9) applies to a dentist performer in respect of a scheme year and paragraph (8)(a) or (b) is subsequently satisfied in respect of that scheme year, that dentist performer shall pay contributions at the rate determined in accordance with paragraph (8).

(11) A host Board may adjust a practitioner's contribution rate for any scheme year determined in accordance with paragraph (6) or (9)—

- (a) by agreement between the host Board on the one hand and the practitioner on the other hand; or
- (b) without such agreement, if the host Board is satisfied that pensionable earnings will exceed the amount used to determine the contribution rate in accordance with those paragraphs.

(12) If a member is in practitioner service and concurrently in HSC employment in respect of which the member is liable to pay contributions in accordance with regulation 27, contributions payable in respect of the member's practitioner service shall be determined under this Part and contributions payable in respect of the member's HSC employment shall be determined under Part 2.

(13) Where a practitioner (other than a dentist performer) is also in service as a dentist performer (or vice versa) the practitioner service as a practitioner (other than as a dentist performer) and the practitioner service as a dentist performer will each be treated separately under this regulation.

(14) In determining the contributions payable in accordance with paragraph (2), a host Board must take account of pensionable earnings as a practitioner or, as the case may be, a dentist performer, from all practitioner or, as the case may be, dentist performer sources, including any such pensionable earnings determined by another host Board.

(15) An employing authority that is not a host Board shall, in respect of any pensionable earnings it pays to a practitioner, take advice from the relevant host Board in determining the contributions payable in accordance with paragraph (2).

(16) If, apart from this paragraph, the earnings for a scheme year in respect of a member's practitioner service would not be a whole number of pounds, those earnings must be rounded down to the nearest whole pound.”.

### **Amendment of regulation 177**

**53.**—(1) Regulation 177 (Pension credit members) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (2) at the end, add (as full-out words) “This is subject to paragraphs (5) and (8).”.

(3) After paragraph (4), add—

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

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

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

- (a) is first calculated as mentioned in paragraph (3); and



(b) then that amount is reduced by such amount as the Department determines, after consulting the Scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

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

(8) A pension credit member who has not reached the age of 65 is entitled to immediate payment of a pension payable for life if, in the opinion of the Department, the pension credit member—

(a) meets the ill-health condition specified in paragraph 1 of Schedule 28 to the Finance Act 2004;

(b) had previously been engaged in regular employment but is now permanently incapable of engaging in such employment due to mental or physical infirmity; and

(c) has claimed the pension.

(9) The amount of the pension under paragraph (8) is calculated as specified in paragraph (3).

(10) For the purpose of paragraph (8), the Department may require whatever medical evidence that it considers necessary.”.

#### **Amendment of regulation 179**

**54.** In paragraph (3)(b) of regulation 179 (Early payment of pensions with actuarial reduction) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 180**

**55.**—(1) Regulation 180 (Partial retirement (members aged at least 55)) is amended as provided by paragraphs (2) to (4).

(2) In paragraph (1) after “active member” (twice), insert “or a non-contributing member”.

(3) In paragraph (7)(b)(i) for “latest GP certificate referred to in regulation 260” to “in any other case”, substitute “latest certificate referred to in regulation 260, or the latest scheme year’s final pensionable earnings referred to in regulation 161 and agreed with each relevant host Board”.

(4) In paragraph (8)(b)(twice) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 181**

**56.** In paragraph (4) of regulation 181 (Increase in level of engagement pay following exercise of option under regulation 180) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 182**

**57.**—(1) Regulation 182 (Early retirement on ill-health (active members)) is amended as provided by paragraphs (2) and (3).

(2) In the heading after “active members”, insert “and non-contributing members”.

(3) In paragraph (2) after “active member”, insert “or a non-contributing member”.

### **Amendment of regulation 183**

**58.** In paragraph (2) of regulation 183 (Re-assessment of entitlement to an ill-health pension determined under regulation 182)—

- (a) at the end of sub-paragraph (b)(ii) omit “and”;
- (b) after sub-paragraph (c), add—
  - “; and
- (d) the member has not become entitled to a tier 2 pension in respect of any later service under regulation 240.”.

### **Amendment of regulation 185**

**59.**—(1) Regulation 185 (General option to exchange part of pension for lump sum) is amended as provided by paragraphs (2) to (4).

(2) In paragraph (1) for “other than a pension credit member”, substitute “(other than a pension credit member whose rights under the Scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the Finance Act 2004)”.

(3) In paragraph (7) at the end, add (as full-out words) “This is subject to paragraphs (8) and (9).”.

(4) After paragraph (7), add—

“(8) If the pension is an ill-health pension under regulation 182, the option under this regulation may only be exercised by giving notice in writing to the Department in such form as it requires—

- (a) where the member is awarded—
  - (i) a tier 1 ill-health pension under paragraph (2) of that regulation, at the time of claiming that tier 1 ill-health pension,
  - (ii) a tier 2 ill-health pension under paragraph (3) of that regulation, at the time of claiming that tier 2 ill-health pension; or

(b) before such later time as the Department specifies in writing.

(9) If the pension is a tier 2 ill-health pension under regulation 183, in substitution for a tier 1 ill-health pension under regulation 182, the option under this regulation may only be exercised—

- (a) in relation to the difference between the tier 1 ill-health pension that ceases to be payable in accordance with paragraph (3) of regulation 183 and the tier 2 ill-health pension to which the member becomes entitled under that paragraph; and
- (b) by giving notice in writing to the Department in such form as it requires—
  - (i) at the time of award of the tier 2 ill-health pension under that paragraph, or
  - (ii) before such later time as the Department specifies in writing.”.

### **Amendment of regulation 186**

**60.**—(1) Regulation 186 (Option for members in serious ill-health to exchange whole pension for lump sum) is amended as provided by paragraphs (2) to (5).

(2) In paragraph (1) after “active member”, insert “or a non-contributing member”.

(3) In paragraph (4) after “active member”, insert “or a non-contributing member”.

(4) For paragraph (5) substitute—

“(5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable and before reaching the age of 75, an amount equal to the sum of—

- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 185 at the appropriate time; and
  - (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 177 after exercising that option, multiplied by 5.”
- (5) In paragraph (6) after “active member”, insert “or a non-contributing member”.

#### **Omission of regulation 188**

61. Omit regulation 188 (Pension credit member’s rights).

#### **Amendment of regulation 192**

62. In paragraphs (2)(a) and (4)(b) of regulation 192 (Dual capacity membership) after “active member”, insert “or a non-contributing member”.

#### **Amendment of regulation 194**

63. In regulation 194 (Surviving adult dependants' pensions), in paragraph (1) after “active member”, insert “, a non-contributing member”.

#### **Amendment of regulation 196**

- 64.—(1) Regulation 196 (Amount of pensions under regulation 194: active members) is amended as provided by paragraphs (2) and (3).

- (2) In the heading after “active ”, insert “and non-contributing”.

- (3) For paragraph (1), substitute—

“(1) In the case of an active member or a non-contributing member, for the period of 6 months beginning with the day after the member’s death (“the initial period”) the rate of the pension payable under regulation 194 (if that amount is greater than the amount of the pension payable to the surviving adult under this Chapter apart from this paragraph), is equal to—

- (a) in the case of a deceased active member, the rate of the member’s pensionable earnings during the last complete quarter before the member’s death;
- (b) in the case of a deceased non-contributing member, the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

#### **Amendment of regulation 197**

65. For paragraph (3) of regulation 197 (Amount of pensions under regulation 194: pensioner members), substitute—

“(3) Any reduction made in the rate of the pension—

- (a) under Part 3 Chapter 8 (Abatement) is ignored for the purposes of paragraphs (1) and (2); and
- (b) under regulation 179 (Early payment of pensions with actuarial reduction) is ignored for the purposes of paragraph (2).”.

### **Amendment of regulation 200**

**66.** In paragraph (3) of regulation 200 (Re-employed pensioners: adult survivor pensions in initial period) for sub-paragraphs (a) and (b), substitute—

- “(a) in the case of—
  - (i) a deceased active member, the rate of the deceased’s pensionable earnings during the last complete quarter before the member’s death, or
  - (ii) a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service; and
- (b) the rate of the deceased member’s pension (if any) payable at the time of death.”.

### **Amendment of regulation 203**

**67.**—(1) Regulation 203 (Amount of children’s pension under regulation 201: deceased active members) is amended as provided by paragraphs (2) to (6).

(2) In the heading after “deceased active members” insert, “and deceased non-contributing members”.

(3) In paragraph (1) after “active” insert, “, or a non-contributing member”.

(4) For paragraph (3), substitute—

“(3) In this regulation “the basic death pension” means twice the appropriate proportion of the deceased member’s pension under regulation 176 and—

- (a) in the case of an active member, that pension will include the greater of—
  - (i) any increase due to such enhancement period (if any) that would have applied for the purposes of regulation 182(5) if the deceased had become entitled to a tier 2 ill-health pension on the date of death, and
  - (ii) 10 years’ pensionable service;
- (b) in the case of a non-contributing member, will be based on the pensionable service that the deceased was entitled to count on the date of death.”.

(5) In paragraph (5) for “equal to the average rate of the member’s pensionable earnings during the complete quarter before he died.”, substitute—

“equal to—

- (i) in the case of a deceased active member, the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died, and
- (ii) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

(6) For paragraph (6), substitute—

“(6) In a case within paragraph (4)(b) or (c), the rate of pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to—

- (a) in the case of a deceased active member, the average rate of the deceased’s pensionable earnings during the last complete quarter before the member died; and
- (b) in the case of a deceased non-contributing member, the rate of the monthly average of the deceased’s uprated earnings on the member’s last day of pensionable service.”.

#### **Amendment of regulation 204**

68. In paragraph (1) of regulation 204 (Amount of children's pension under regulation 201: deceased pensioner members) after "active member", insert "or a non-contributing member".

#### **Amendment of regulation 205**

69. In paragraphs (1) and (3)(a) of regulation 205 (Amount of children's pension under regulation 201: deceased deferred members) after "active member", insert "or a non-contributing member".

#### **Amendment of regulation 206**

70. In paragraph (3) of regulation 206 (Amount of children's pension under regulation 201: recent leavers) for sub-paragraph (a), substitute—

- “(a) “the basic death pension” means twice the appropriate proportion of the pension to which the deceased would be entitled to—
  - (i) if the deceased had become entitled to a pension under regulation 182(5), or
  - (ii) if greater, the amount that the member's pension would have been if it had been based on 10 years' pensionable service (disregarding any additional pension), and”.

#### **Amendment of regulation 208**

71.—(1) Regulation 208 (Amount of children's pension under regulation 201: re-employed pensioners) is amended as provided by paragraphs (2) to (5).

(2) In paragraph (1) after "active member", insert "or a non-contributing member".

(3) For sub-paragraphs (a) and (b) of paragraph (2), substitute—

- “(a) in the case of—
  - (i) a deceased active member, the rate of the deceased's pensionable earnings during the last complete quarter before the member died, or
  - (ii) a deceased non-contributing member, the rate of the monthly average of the deceased's uprated earnings on the last day of the member's pensionable service, and
- (b) the rate of the pension being received by the deceased (if any) at the date of death.”.

(4) In paragraph (5)—

- (a) in sub-paragraph (a) after "active member", insert "or a non-contributing member";
- (b) in sub-paragraph (b) after "active members", insert "or non-contributing members”.

(5) For paragraph (6)(a), substitute—

- “(a) the service taken into account (in regulation 203(3)) for the purposes of the calculation of the amount referred to in paragraph (5)(a), and”.

#### **Amendment of regulation 210**

72.—(1) Regulation 210 (Amount of lump sum: single capacity members and recent leavers (disregarding regulation 180 employments)) is amended as provided by paragraphs (2) to (5).

(2) For paragraph (1), substitute—

- “(1) The lump sum payable on death of an active member or a non-contributing member, who is not a deferred member or a pensioner member, is an amount equal to—

- (a) in the case of a deceased active member, twice the annual average of the member's uprated earnings at the date of death; or
  - (b) in the case of a deceased non-contributing member, twice the annual average of the member's uprated earnings on the member's last day of pensionable service."
- (3) In paragraph (2)—
- (a) after "active member", insert "or a non-contributing member";
  - (b) in sub-paragraph (b) for "at the date of death", substitute "by which the pension was calculated";
  - (c) at the end, insert (as full-out words) "This is subject to regulations 213A and 214."
- (4) In paragraph (3) for "is not an active member", substitute "was not an active member or a non-contributing member".
- (5) In paragraph (8)(a) for "is an active member", substitute "was an active member or a non-contributing member".

#### **Amendment of regulation 211**

**73.**—(1) Regulation 211 (Amount of lump sum: dual capacity members (disregarding regulation 180 employments)) is amended as provided by paragraphs (2) and (3).

- (2) In paragraph (1)—
- (a) in sub-paragraph (a) for "is an active member", substitute "was an active member or a non-contributing member";
  - (b) in sub-paragraph (b) for "is", substitute "was".
- (3) In paragraph (2) for sub-paragraph (a), substitute—
- "(a) five times the annual rate of pension—
    - (i) payable under regulation 182(5) (tier 2 ill-health pension), if the deceased had not reached the age of 65,
    - (ii) payable under regulation 176 (normal retirement pensions), if the deceased had reached the age of 65,
 to which the member would have been entitled—
    - (aa) in the case of a deceased active member, at the member's date of death, or
    - (bb) in the case of a deceased non-contributing member, on the last day of the member's pensionable service, and".

#### **Amendment of regulation 212**

**74.**—(1) Regulation 212 (Amount of lump sum: dual capacity members: members with pensions under regulation 180) is amended as provided by paragraphs (2) to (4).

- (2) In paragraph (1)—
- (a) in sub-paragraph (a) for "is an active member", substitute "was an active member or a non-contributing member";
  - (b) in sub-paragraph (b) for "is", substitute "was".
- (3) For paragraph (2), substitute—
- "(2) The lump sum is an amount—
    - (a) equal to the sum of—

- (i) in the case of a deceased active member, twice the appropriate fraction of the annual average of the member's uprated earnings at the date of death, or
- (ii) in the case of a deceased non-contributing member, twice the appropriate fraction of the annual average of the member's uprated earnings at the member's last day of pensionable service, and".

(4) In paragraph (5) (in the definition of "DPS") after "active member", insert "or a non-contributing member".

#### **Amendment of regulation 240**

75.—(1) Regulation 240 (Re-employed tier 1 ill-health pensioners) is amended as provided by paragraphs (2) and (3).

(2) In paragraph (4) at the end, insert (as full-out words) "This is subject to paragraph (5).".

(3) After paragraph (4) add—

“(5) If the re-employed member—

- (a) ceases to be entitled to a tier 1 ill-health pension in respect of the earlier service;
- (b) becomes entitled to a tier 2 ill-health pension in respect of that earlier service in accordance with regulation 183(3); and
- (c) on the termination of the later service, the member becomes entitled to a tier 1 or, as the case may be, tier 2 ill-health pension in respect of that later service,

the re-employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are—

- (a) a tier 2 ill-health pension paid in accordance with regulation 182 in respect of the member's earlier service; and
- (b) a tier 1 ill-health pension in respect of the member's later service.”.

#### **Amendment of regulation 252**

76. In paragraph (2) of regulation 252 (Commutation of small pensions), omit sub-paragraph (d).

#### **Amendment of regulation 256**

77.—(1) Regulation 256 (Interest on late payment of benefits and refunds of contributions) is amended as provided by paragraphs (2) to (6).

(2) In paragraph (2) after "interim" insert, "or substitute".

(3) For paragraph (3), substitute—

“(3) The Department must pay interest on the amount of a pension, lump sum, refund of contributions or an interim or substitute award which is unpaid ("the unpaid amount") to the person to whom it should have been paid unless the Department is satisfied that the unpaid amount was not paid on the due date because of some act or omission on the part of the member or other person to whom it should have been paid.”.

(4) In paragraph (5) after "unpaid amount", insert "(other than an unpaid amount in respect of an interim or substitute award)".

(5) For paragraph (6), substitute—

“(6) The due date for an unpaid amount—

- (a) referred to in paragraph (5) in respect of which the Department was not in possession of all the information necessary for the calculation of the amount of

the pension, lump sum or refund of contributions referred to in that paragraph on the date which would, in accordance with paragraph (5) be the due date;

(b) in respect of an interim or substitute award,

shall be the first day on which the Department was in possession of all the information necessary to calculate that pension, lump sum, refund of contributions or interim or substitute award.”

(6) In paragraph (7)—

(a) for “interim award” substitute “interim or substitute award”;

(b) at the end of sub-paragraph (a), omit “and”;

(c) at the end of sub-paragraph (b), add—

“; and

(c) any amount paid that increases the amount of an earlier payment due to the payment of a tier 2 ill-health pension under regulation 182 paid to a member in substitution for a tier 1 ill-health pension under that regulation following a determination by the Department under regulation 183.”

#### **Amendment of regulation 260**

**78.** For regulation 260 (Employing authority and certain member record keeping and contribution estimates), substitute—

#### **“Employing authority and certain member record keeping and contribution estimates**

**260.**—(1) As regards a principal medical practitioner, in respect of each scheme year, the member shall provide each relevant host Board with a certificate of their pensionable earnings based on—

(a) the accounts drawn up in accordance with generally accepted accounting practice by the practice of which the member is a member; and

(b) the return that member has made to Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(2) As regards an assistant medical practitioner or a locum practitioner, in respect of each scheme year, the member shall provide each relevant host Board with a certificate of their pensionable earnings based on—

(a) the payments they receive from employing authorities for practitioner services; and

(b) the return that member has made to Her Majesty’s Revenue and Customs in respect of their earnings for that year,

no later than 1 month after the date on which that return was required to be submitted to Her Majesty’s Revenue and Customs.

(3) As regards a principal dental practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their superannuable earnings based on—

(a) the notice of superannuable earnings referred to in regulation 148; and



(b) their superannuable earnings as a principal dental practitioner from all other principal dental practitioner sources,

no later than 6 months after the end of that scheme year.

(4) As regards an assistant dental practitioner, in respect of each scheme year, the member shall provide each relevant host Trust or Board with a certificate of their superannuable earnings based on—

(a) the payments they receive from employing authorities for practitioner services; and

(b) their superannuable earnings as an assistant dental practitioner from all other assistant dental practitioner sources,

no later than 6 months after the end of that scheme year.

(5) As regards a GMS practice or APMS contractor, in respect of each scheme year, the practice or contractor shall provide the Department with—

(a) a statement of estimated pensionable earnings in respect of principal medical practitioners who perform medical services as, or on behalf of, the practice or contractor and assistant medical practitioners employed by the practice or contractor; and

(b) an end-of-year statement of—

(i) pensionable earnings,

(ii) contributions to the Scheme made under regulation 160 (Contributions by members),

(iii) contributions to the Scheme made under regulation 162 (Contributions by employing authorities: general), and

(iv) any superannuable earnings deemed in accordance with regulation 144 of this Part,

in respect of assistant medical practitioners employed by the practice or contractor.

(6) The Department shall be provided with—

(a) the statement referred to in paragraph (5)(a) at least 1 month before the beginning of that scheme year;

(b) the statement referred to in paragraph (5)(b) no later than 3 months after the end of that scheme year.

(7) A host Board shall, for each scheme year and no later than 13 months after the end of each scheme year, forward to the Department a copy of the records the host Board maintains in respect of practitioners under regulation 164(17)(b).

(8) All employing authorities shall, for each scheme year—

(a) provide the Department with a statement of estimated total contributions due to the Scheme under regulation 160 (contributions by members) and 162 (contributions by employing authorities: general); and

(b) maintain records of contributions to the Scheme made under regulation 160 and regulation 162.

(9) The statement referred to in paragraph (8)(a) shall be provided to the Department and no later than 2 months after the end of each scheme year.

(10) Except where the Department waives such requirement, an employing authority shall provide the Department with a statement of contributions to the Scheme recorded in accordance with paragraph (8)(b) no later than 2 months after the end of each scheme year.

(11) If, in respect of a scheme year, a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to that member, the member's pensionable earnings for that scheme year shall be zero.

This is subject to paragraph (12).

(12) If, in respect of a scheme year—

- (a) a member has failed to comply with the requirements of whichever of paragraphs (1) to (4) applies to the member;
- (b) a benefit is payable to, or in respect of that member, under this Part of these Regulations; and
- (c) the member's employing authority is in possession of a figure representing all or part of the member's pensionable earnings for that year,

the Department may treat that figure as the amount of the member's pensionable earnings for that year.

(13) If, in respect of a scheme year, a member—

- (a) dies without complying with the requirements of whichever of paragraphs (1) to (4) applies to the member; or
- (b) is, in the opinion of the Department, unable to look after the member's own affairs by reason of illness or lack of capacity,

the Department may require that member's personal representatives to provide the relevant certificate—

- (i) within the period referred to in whichever of paragraphs (1) to (4) was or is applicable to the member, or
- (ii) within such other period as the Department should permit.

(14) The certificates and statements referred to in this regulation—

- (a) shall be in such form as the Department shall from time to time require;
- (b) may be provided to the Department in such manner as it may from time to time permit.

(15) A person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment or of a disturbance in the functioning of his mind or brain.”.