

---

STATUTORY INSTRUMENTS

---

**1995 No. 300**

**The National Health Service Pension Scheme Regulations 1995**

**PART A**

*Preliminary*

**Citation and commencement**

**A1.**—(1) These Regulations may be cited as the National Health Service Pension Scheme Regulations 1995.

(2) These Regulations come into force on 6th March 1995.

**Interpretation**

**A2.** In these Regulations—

“the previous regulations” means the National Health Service (Superannuation) Regulations 1980(1);

“buy-out policy” means a policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the Pension Schemes Act 1993(2) (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) and satisfies any requirements of the Inland Revenue and “buy out” shall be construed accordingly;

“cash equivalent” is to be construed in accordance with Chapter IV of Part IV of the Pension Schemes Act 1993;

“contracting-out requirements” means the requirements mentioned in section 9(2) of the Pension Schemes Act 1993;

“dependent child” is to be construed in accordance with regulation H1;

“employing authority” means—

- (a) a health authority within the meaning of section 128 of the National Health Service Act 1977(3),
- (b) a Family Health Services Authority established by the Secretary of State pursuant to section 10 of the National Health Service Act 1977(4),
- (c) a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990(5), and

---

(1) S.I. 1980/362 as amended by S.I. 1981/1205, 1982/288, 1765, 1985/39, 1987/2218, 1989/804, 1991/584.

(2) 1993 c. 48. See also section 81 of that Act.

(3) 1977 c. 49. The definition of “health authority” was inserted into section 128 by section 5(4) of, and Schedule 3 paragraph 11 to, the Health and Social Services Act 1984 c. 48.

(4) 1977 c. 49. Section 10 was amended by section 5 of the Health and Social Security Act 1984 (c. 48). See also section 2 of the National Health Service and Community Care Act 1990 (c. 19).

(5) 1990 c. 19.

(d) any other body that is constituted under an Act relating to health services and which the Secretary of State agrees to treat as an employing authority for the purposes of the scheme;

“final year’s pensionable pay” has the meaning given in regulation C1(6);

“guaranteed minimum pension” means guaranteed minimum pension, or accrued rights to guaranteed minimum pension, under section 14 of the Pension Schemes Act 1993;

“health service scheme” has the meaning given in regulation R8(1);

“member”, except where the context otherwise requires, means a person who is in pensionable service under the scheme or a person who has been in such service and in respect of whom benefits under the scheme are, or will become, payable;

“mental health officer” has the meaning given in regulation R3(14);

“NHS employment” means employment with an employing authority;

“occupational pension scheme” means an occupational pension scheme within the meaning of section 1 of the Pension Schemes Act 1993 which is—

(a) approved by the Inland Revenue for the purposes of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988(6) (retirement benefits schemes) or whose application for approval under that Chapter is under consideration,

(b) a statutory scheme as defined in section 612(1) of the Income and Corporation Taxes Act 1988 (interpretation), or

(c) a scheme to which section 608 of the Income and Corporation Taxes Act 1988 applies (superannuation funds approved before 6th April 1980);

“officer” means a person employed by an employing authority;

“opting-out” and related expressions are to be construed in accordance with regulation B4;

“pay period” means, in the case of an officer, the period in respect of which each payment of salary or wages is made in accordance with the officer’s contract of employment and, in the case of a practitioner, any period of three months ending on the last day of March, June, September or December;

“pensionable employment” means NHS employment in respect of which the member contributes to the scheme;

“pensionable pay” has the meaning given in regulation C1;

“pensionable service” has the meaning given in regulation C2;

“personal pension scheme” means a personal pension scheme within the meaning of Chapter IV of Part XIV of the Income and Corporation Taxes Act 1988 (personal pension schemes) which is approved by the Inland Revenue for the purposes of that Chapter;

“practitioner” means a medical or dental practitioner, other than a trainee practitioner or a person who is paid by an employing authority wholly by way of salary;

“preservation requirements” means the requirements of Chapter I of Part IV of the Pension Schemes Act 1993 relating to the preservation of benefits under occupational pension schemes;

“Public Sector Transfer Arrangements” means the arrangements applying to certain public sector and other schemes under which a common basis for transfer payments is applied by the scheme and those other participating schemes;

“quarter” means a 3 month period ending on the last day of March, June, September or December;

- “qualifying service” has the meaning given in regulation C3;
- “relevant daily proportion” means 1/365th of the amount that would apply in respect of one year;
- “remuneration” is defined, for the purposes of Tables 1 and 2 of Schedule 1, in regulations Q4(4) and (5) (paying for additional service by single payment) and Q5(4) and (5) (paying for unreduced retirement lump sum by single payment);
- “scheme”, except where the context otherwise requires, means the National Health Service Pension Scheme for England and Wales, the rules of which are set out in these Regulations;
- “special class officer” means a member to whom regulation R2 (special provision for certain nurses, physiotherapists, midwives and health visitors) applies or to whom regulation R3 (special provision for certain mental health officers) applies;
- “specialist” means a consultant, senior hospital medical officer or senior hospital dental officer;
- “State pension age” means age 65 for a man and age 60 for a woman;
- “temporary additional session” has the meaning given in regulation R7(3) and (4);
- “trainee practitioner” means a person who is being trained in general practice as a trainee general practitioner under arrangements made by the Secretary of State.

## PART B

### *Membership*

#### **Membership of the scheme**

**B1.**—(1) Subject to regulation B2 (restrictions on membership), the following persons are eligible to join the scheme—

- (a) officers; and
- (b) medical and dental practitioners and trainee practitioners.

(2) Each eligible person will, on commencing NHS employment, be included in the scheme automatically, unless the person opts not to be included.

(3) A person who, on the coming into force of these Regulations, is not included in the scheme will not be included in the scheme automatically, but, if eligible, may join the scheme by applying on a form provided by the employing authority.

(4) A person who is included in the scheme may opt-out at any time in accordance with regulation B4 (opting-out of the scheme).

#### **Restrictions on membership**

**B2.** The following persons may not join the scheme—

- (a) persons under the age of 16 or over the age of 70;
- (b) special class officers over the age of 65;
- (c) persons eligible to participate in a superannuation scheme established under section 9 of the Superannuation Act 1972(7);
- (d) persons who hold honorary appointments and do not at the same time hold any other employment which entitles them to join the scheme.

### **Restriction on further participation in the scheme**

**B3.**—(1) Persons who cease to satisfy the conditions for eligibility for membership specified in regulations B1(1) and B2 may not contribute to or accrue further pensionable service under the scheme.

(2) Persons whose pensions under the scheme are payable may not contribute to or accrue further pensionable service under the scheme, except in the cases referred to in regulation E2(11) (further pensionable employment under the age of 50 after early retirement pension becomes payable on grounds of ill-health) and regulation R4(6) (further pensionable employment where early retirement pension becomes payable in respect of concurrent employment on grounds of redundancy).

### **Opting-out of the scheme**

**B4.**—(1) A person who does not wish to, or who no longer wishes to, participate in the scheme may opt-out of the scheme at any time by giving notice in writing to his employing authority and such person will be treated as having left pensionable employment on the date the notice takes effect.

(2) Subject to paragraph (3), the notice will take effect from the first day of the pay period immediately following its receipt by the employing authority, unless a later date is specified in the notice.

(3) A person who opts-out of the scheme before the end of the pay period during which the employing authority included that person in the scheme will be treated as never having been included in the scheme.

(4) A notice under paragraph (1) will apply to any subsequent employment with the same employing authority.

(5) Subject to paragraph (6), a person who has opted-out of the scheme may, if eligible to do so, join or rejoin the scheme by giving notice in writing to the employing authority and on so doing will be included in the scheme on the first day of the first pay period after the notice is received or such later date (which must be the first day of a pay period) as is specified in the notice.

(6) A person who has opted-out may not join or rejoin the scheme during a period of absence from work for any reason.

(7) A person shall not be treated as having retired from pensionable employment by reason only of having opted-out of the scheme.

## **PART C**

### *Pensionable pay, pensionable service and qualifying service*

#### **Meaning of “pensionable pay” and “final year’s pensionable pay”**

**C1.**—(1) In these Regulations, “pensionable pay” means, subject to the provisions of this regulation, all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, payments made to cover expenses or payments for overtime.

(2) Subject to paragraph (3), any amount by which a member’s pensionable pay exceeds the permitted maximum will be ignored when calculating the amount of any contributions or benefits payable under these Regulations.

(3) Pensionable pay in excess of the permitted maximum will not be ignored in the case of a member who joined the scheme before 1st June 1989 except in relation to a period following a break in pensionable employment on or after that date.

(4) For the purposes of paragraph (3), no account shall be taken of a break in pensionable employment if—

- (a) the member returns to pensionable employment within 12 months after leaving;
- (b) the break is due to the member's secondment or posting to another employer and, at the time of the secondment or posting, the member has a definite expectation of returning to pensionable employment when the period of secondment or posting ends;
- (c) the break is due to the member being engaged in other employment which is approved for this purpose by the Secretary of State;
- (d) the break is due to the member's unpaid absence from work and the member returns to pensionable employment within one month after returning to work; or
- (e) the break corresponds to the member's absence from work wholly or partly because of pregnancy or confinement and the member returns to work after the break in exercise of her right under Section 39(1) of the Employment Protection (Consolidation) Act 1978<sup>(8)</sup> and returns to pensionable employment no later than one month after returning to work.

(5) This regulation applies to a member in respect of whom a transfer payment has been accepted from a health service scheme in the same way as if the period of employment that qualified the member for benefits under the health service scheme had been pensionable employment.

(6) In these Regulations, "final year's pensionable pay" means pensionable pay in respect of the member's last year of pensionable employment, ending on the date the member ceases to be in such employment, or dies, whichever occurs first, except—

- (a) if pensionable pay was greater in either or both of the 2 consecutive years immediately preceding the last year, "final year's pensionable pay" means pensionable pay in respect of the year immediately preceding the last year or, if greater, pensionable pay in respect of the first of those 2 consecutive years; and
- (b) if the member was in pensionable employment for less than 12 months, "final year's pensionable pay" means—

$$\frac{\text{pensionable pay}}{\text{number of days pensionable employment}} \times 365$$

(7) In this regulation, "the permitted maximum" means the same as in section 590C of the Income and Corporation Taxes Act 1988 (earnings cap)<sup>(9)</sup>.

### Meaning of "pensionable service"

**C2.**—(1) In these Regulations, "pensionable service" is service which counts both for the purpose of ascertaining entitlement to benefits under these Regulations and for the purpose of calculating them and means, subject to paragraph (2), the aggregate of the following—

- (a) any period of pensionable employment in respect of which the member contributes to the scheme under regulation D1 (contributions by members);
- (b) any period that was reckonable under the previous regulations as a period of contributing service for the purpose of those regulations;
- (c) any period of contributing service that is reckonable under regulation 3 of the National Health Service (Superannuation) (War Service etc) Regulations 1977<sup>(10)</sup> (reckoning war service as contributing service under the principal regulations);

<sup>(8)</sup> 1978 c. 44. Section 39 was inserted by section 23 of, and Schedule 2 to, the Trade Union Reform and Employment Rights Act 1993 c. 19.

<sup>(9)</sup> 1988 c. 1. Section 590C was inserted by section 75 of, and Part I of Schedule 6 to, the Finance Act 1989.

<sup>(10)</sup> S.I. 1977/1922.

- (d) any period of pensionable service credited to the member under regulation N1(4) (transfers from other pension arrangements) or as a result of a transfer payment to the scheme under the previous regulations; and
  - (e) any period of additional service which the member has purchased under regulation Q1 or under regulations 25 or 26 of the previous regulations.
- (2) A member's pensionable service does not include—
- (a) any period of employment in respect of which the Secretary of State has paid contributions to another occupational pension scheme in respect of the member;
  - (b) in the case of a member who has become entitled to a pension (including a preserved pension) under the scheme, any period that was taken into account for the purpose of determining whether he was entitled to that pension, or for the purpose of calculating the amount of that pension;
  - (c) any period of employment in respect of a temporary additional session; or
  - (d) any period in respect of which the Secretary of State has discharged her liability to provide benefits under regulation K7 (state scheme premiums), L2 (refund of contributions) or M1 (transfers and buy-outs).
- (3) The benefits described in these Regulations will be calculated by reference to a maximum of 45 years' pensionable service of which only 40 years may relate to the period before the member reaches age 60 (age 55 if the member is a special class officer), and, if the member's pensionable service exceeds these limits, the amount of the excess will be ignored.
- (4) Where the member has pensionable service in excess of the limits described in paragraph (3), the Secretary of State shall select the years by reference to which the benefits are to be calculated and the years selected shall be those which produce the most favourable result to the member.
- (5) If, when a member leaves pensionable employment or dies, a payment is made in respect of leave not taken—
- (a) the member's pensionable employment will be treated, subject to paragraph (3), as continuing for a period equal to the period of leave for which payment is made; and
  - (b) the payment will be treated as the member's pensionable pay for that period.
- (6) In order to calculate the length of a member's pensionable service, all periods of pensionable service will be added and each resulting period of 365 days (disregarding pensionable service on 29th February in a leap year) will be treated as one year.

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

**C3.—**(1) In these Regulations, “qualifying service” is service which counts for the purpose of ascertaining entitlement to benefits under these Regulations but not for the purpose of calculating them and means the aggregate of the following—

- (a) pensionable service under these Regulations, except any period of pensionable service credited to the member under regulation N1(4) (transfers from other pension arrangements) or any period of additional service referred to in regulation Q1 (right to buy additional service);
  - (b) where a transfer payment has been accepted under regulation N1(4) in respect of the member's rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy, the period of employment that qualified the member for those rights; and
  - (c) any period reckonable as “service” under the previous regulations.
- (2) If a member leaves and subsequently returns to pensionable employment, paragraphs (3) and (4) will apply for the purpose of calculating the member's qualifying service.

(3) If the interval between leaving and rejoining pensionable employment does not exceed one month or is due to a trade dispute, the member's pensionable service before and after the break will be treated as continuous for the purpose of calculating the member's qualifying service after the break, (even if the member's pensionable service before and after the break is otherwise treated separately for the purpose of calculating the member's benefits) except that the interval will be excluded.

(4) If a member is entitled to a preserved pension under regulation L1 in respect of the earlier period of pensionable service (whether or not the pension has become payable), and the periods of pensionable service before and after the break are not treated as continuous under regulation L4, the period of pensionable service to which that pension relates will be treated as qualifying service in relation to the later period.

(5) If a pension becomes payable to a member under regulation R4(6) (members doing more than one job) and the member has elected to take a benefit only in respect of the employment that has ended, the pensionable service in respect of which that benefit is calculated will be treated as qualifying service in relation to the employment in respect of which rights to benefits continue to accrue.

(6) If the member is a whole-time chaplain, any period of employment as a whole-time chaplain before joining the scheme will be treated as qualifying service.

## PART D

### *Contributions*

#### **Contributions by members**

**D1.**—(1) Each member in pensionable employment must contribute to the scheme.

(2) Members whose employment is by way of manual labour must contribute 5 per cent. of their pensionable pay. Other members must contribute 6 per cent of their pensionable pay.

(3) If the member is a special class officer, contributions must be paid until the member reaches age 65, or completes 45 years' pensionable service and reaches age 60.

(4) If the member is not a special class officer, contributions must be paid until the member reaches age 70, or completes 45 years' pensionable service and reaches age 65.

(5) The employing authority shall deduct each member's contributions from the member's earnings and pay them to the Secretary of State not later than the 21st day of the month following the month in which the earnings were paid.

#### **Contributions by employing authorities**

**D2.**—(1) Each employing authority must contribute to the scheme, in respect of each member in pensionable employment with the authority, at such a rate as the Secretary of State specifies from time to time.

(2) The Secretary of State shall take the advice of the Government Actuary and obtain the Treasury's consent before specifying the rate at which employing authorities must contribute to the scheme under paragraph (1).

(3) In addition to the contributions payable under paragraph (1), where, on leaving pensionable employment, a pension becomes payable to a member under regulation E3 (early retirement on grounds of redundancy) or E4 (early retirement pension with employer's consent) the employing authority must, subject to paragraph (8), make additional contributions to the Secretary of State in respect of—

- (a) the cost of providing the pension under regulation E3 for the period between the member's leaving pensionable employment and reaching age 60 or, in the case of a member who is a special class officer, the age of 55;
- (b) the cost of providing the pension under regulation E4 for the period between the member's leaving pensionable employment and reaching age 60;
- (c) the cost of providing, under regulation R6 (members entitled to fees for domiciliary consultations), any benefit that supplements the pension referred to in sub-paragraph (a) or (b) above for the period referred to in those sub-paragraphs;
- (d) the cost of providing compensation under regulations 4(1) (payment of compensation), 6(1) (compensation payable to widow or dependants) or 7 (compensation where death gratuity becomes payable) of the National Health Service (Compensation for Premature Retirement) Regulations 1981<sup>(11)</sup>;
- (e) the cost of providing any increase under Part I of the Pensions (Increase) Act 1971<sup>(12)</sup> in the rate of the benefits referred to in sub-paragraphs (a) to (d), but in the case of the benefits referred to in sub-paragraphs (a) to (c), only for the periods referred to in those sub-paragraphs; and
- (f) the additional cost attributable to early payment of the lump sum on retirement under regulation E6, such cost being determined by the Secretary of State on the advice of the Government Actuary;

and where, on such a pension becoming payable, a pension also becomes payable to the member in respect of pensionable service with one or more other employing authorities, the employing authority in relation to whom the redundancy arose or by whom the consent to early retirement pension was given shall also be responsible for making additional contributions in accordance with this paragraph in respect of that other pension.

(4) Any contributions that are payable under paragraph (1) shall be paid to the Secretary of State on the same day as the member's contributions under regulation D1(5).

(5) Any additional contributions that are payable to the Secretary of State under paragraph (3) (a), (c), (d), (e) and (f) shall be payable—

- (a) quarterly, before the end of the quarter following that in respect of which the costs in question arose; or
- (b) if the Secretary of State agrees, by—
  - (i) a single payment of an amount determined by the Secretary of State, on the advice of the Government Actuary, made within one month of the date on which the pension under regulation E3 became payable, or
  - (ii) not more than 5 equal annual instalments each of an amount determined by the Secretary of State, on the advice of the Government Actuary, the first of which to be made within one month of the date on which the pension under regulation E3 became payable and the others to be paid by the 31st October in each of the following 4 financial years.

(6) An employing authority making quarterly additional contributions in accordance with paragraph (5)(a) may, if the Secretary of State agrees, discharge its liability under paragraph (3) by making—

<sup>(11)</sup> S.I. 1981/1263, as amended by S.I. 1982/288, 1985/39, 1985/1659 and 1991/584.

<sup>(12)</sup> 1971 c. 56. Part I of the Act has been amended by section 29(1) of, and paragraphs 84 to 86 of Schedule 6 to, the Superannuation Act 1972(c. 11), section 3(2) and (3) of the Pension (Increases) Act 1974 (c. 9), section 65(3) of, and Schedule 5 to, the Social Security Pensions Act 1975 (c. 60) and section 108(1)(b) of, and Part I of Schedule 4 to, the Childrens Act 1975 (c. 72), and Article 3 of S.I. 1972/1299. See also sections 69 and 59A of the Social Security (Pensions) Act 1975 (c. 60) which have effect as if they were contained in Part I of the Act. Section 59A was inserted by the Social Security Act 1979 (c. 18) section 11(4).



- (a) a single payment of an amount determined by the Secretary of State, on the advice of the Government Actuary, made within one month of the date on which notice of the Secretary of State's consent is given to the employing authority, or
  - (b) not more than 5 equal annual instalments each of an amount determined by the Secretary of State on the advice of the Government Actuary, the first of which to be made within one month of the date on which notice of the Secretary of State's consent is given to the employing authority and the others to be paid by the 31st October in each of the following 4 financial years.
- (7) Any additional contributions that are due to the Secretary of State under paragraph (3)(b), (c), (e) and (f) shall be payable in whichever of the following ways the employing authority chooses—
- (a) by a single payment of an amount determined by the Secretary of State, on the advice of the Government Actuary, made within one month of the date on which the pension under regulation E4 became payable, or
  - (b) by not more than 5 equal annual instalments each of an amount determined by the Secretary of State, on the advice of the Government Actuary, the first of which to be made within one month of the date on which the pension under regulation E4 became payable and the others to be paid by the 31st October in each of the following 4 financial years.
- (8) For the purposes of paragraph (3), an employing authority shall not be responsible for meeting any costs in respect of the early payment of benefits to the extent that any such benefits are attributable to a period of additional service purchased by the member.

## PART E

### *Benefits for members*

#### **Normal retirement pension**

**E1.**—(1) A member who retires from pensionable employment on or after attaining age 60 shall be entitled to a pension under this regulation.

(2) The pension under this regulation shall be at a yearly rate of 1/80th of final year's pensionable pay for each complete year of pensionable service, plus the relevant daily proportion of that rate for each additional day of such service.

(3) A member who stays in pensionable employment until age 70 shall be entitled to receive a pension under this regulation at that age even if he does not retire from such employment.

#### **Early retirement pension (ill-health)**

**E2.**—(1) A member who retires from pensionable employment because of physical or mental infirmity that makes him permanently incapable of efficiently discharging the duties of that employment shall be entitled to a pension under this regulation if he has at least 2 years' qualifying service or qualifies for a pension under regulation E1 (normal retirement pension).

(2) Subject to paragraph (3), the pension under this regulation will be calculated as described in regulation E1.

(3) If the member retires from pensionable employment before reaching age 65 and satisfies the requirements of any of paragraphs (4) to (6), the pensionable service upon which the pension is based will, subject to regulation Q1(4) (cases in which additional service is not to count as pensionable service), be increased as described in whichever of those paragraphs is applicable or, if both of paragraphs (5) and (6) apply, as described in whichever of those paragraphs is more favourable to the member.

(4) If the member has at least 5 years' qualifying service but not more than 10 years' pensionable service, the pension will be based on the shorter of—

- (a) twice the member's pensionable service; and
- (b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65.

(5) If the member has more than 10 but not more than 20 years' pensionable service, the pension will be based on the shorter of—

- (a) the pensionable service the member could have completed if he had stayed in pensionable employment until age 65; and
- (b) 20 years' pensionable service.

(6) If the member has more than 10 years' pensionable service and has not reached age 60, the pension will be based on the shortest of—

- (a) the member's actual pensionable service increased by a period of 6 years and 243 days;
- (b) the pensionable service the member could have completed if he had stayed in pensionable employment until age 60; and
- (c) 40 years' pensionable service.

(7) Subject to paragraph (8), where a member becomes entitled to a pension under paragraph (1), the Secretary of State may discharge her liability for that pension by the payment of a lump sum.

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

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

(10) The amount of the lump sum payable under paragraph (7) will be equal to 5 times the difference between the yearly rate of the member's incapacity pension (calculated in accordance with this regulation) and the yearly rate of the member's guaranteed minimum pension or, if lower, twice the member's final year's pensionable pay (less the member's lump sum on retirement payable under regulation E6) and shall be payable in addition to the lump sum on retirement payable under regulation E6, which shall not be subject to any reduction under regulation E6(3).

(11) The employment of a member to whom a pension is payable under this regulation may be pensionable under the scheme providing that the member is under the age of 50 at the date on which he returns to pensionable employment.

#### **Early retirement pension (redundancy etc)**

**E3.**—(1) A member whose pensionable employment is terminated by his employing authority shall be entitled to a pension if—

- (a) he has at least 5 years' qualifying service and has reached age 50, and
- (b) the Secretary of State certifies that the member's employment is terminated by reason of redundancy or in the interests of the efficiency of the service in which he is employed.

(2) The pension under this regulation will be calculated as described in regulation E1 (normal retirement pension).

#### **Early retirement pension (employer's consent)**

**E4.**—(1) A member with at least 2 years' qualifying service, who retires from pensionable employment at any time after reaching age 50 shall, if the relevant employing authority agrees to

meet the cost described in regulation D2(3)(b) (plus any supplement or increase in that cost under regulation D2(3)(c), (e) or (f)), be entitled to a pension under this regulation.

(2) The pension under this regulation will be calculated as described in regulation E1 (normal retirement pension).

#### **Early retirement pension (with actuarial reduction)**

**E5.**—(1) A member with at least 2 years' qualifying service, who retires from pensionable employment at any time after reaching age 50, but before reaching age 60, shall be entitled, subject to paragraph (4), to a pension under this regulation.

(2) The pension under this regulation will be calculated as described in regulation E1 (normal retirement pension) but it will then be reduced by such amount as the Secretary of State, after taking the advice of the Government Actuary, may determine.

(3) Where a pension is payable under paragraph (1), any other amount payable under these Regulations which is paid early shall be reduced in like manner as described in paragraph (2).

(4) A member shall not be entitled to a pension under this regulation if the Secretary of State determines, having taken advice from the Government Actuary, that the pension, as reduced under paragraph (2), would be insufficient to meet her liability to provide a guaranteed minimum pension.

#### **Lump sum on retirement**

**E6.**—(1) Each member shall, on becoming entitled to a pension under any of regulations E1 to E5, also become entitled to a lump sum.

(2) Subject to paragraphs (3) and (7), the lump sum will be equal to 3 times the yearly rate of the pension.

(3) In the case of a man whose pensionable service started before 25th March 1972 and who is or has been married, the lump sum will be reduced in accordance with whichever of paragraphs (4) to (6) is applicable (except to the extent that the reduction has been offset under regulation Q2 (right to buy unreduced retirement lump sum)).

(4) If the man is married, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(5) If the man's wife died, or the man was divorced from his wife, on or after 25th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(6) If the man's wife died, or the man was divorced from his wife, before 25th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service up to and including the date of the death or divorce.

(7) In any case where regulation E5 applies (early retirement pension with actuarial reduction)—

(a) the pension referred to in paragraph (2) of this regulation means the pension before any reduction is made under regulation E5(2); and

(b) the lump sum as calculated under paragraph (2) of this regulation will be reduced by such amount as the Secretary of State, after taking advice from the Government Actuary, shall determine.

## PART F

### *Lump sum on death*

#### **Member dies in pensionable employment**

**F1.**—(1) If a member dies in pensionable employment before reaching age 70, a lump sum on death shall be payable in accordance with regulation F5.

(2) Subject to regulation S4 (benefits on death in pensionable employment after pension becomes payable), the lump sum on death will be equal to twice the member's final year's pensionable pay.

#### **Member dies after pension becomes payable**

**F2.**—(1) If a member dies after his pension under the scheme becomes payable, a lump sum on death shall be payable in accordance with regulation F5.

(2) Subject to regulation S4, the lump sum on death will be equal to 5 times the yearly rate of the member's pension (less the amount of pension already paid) provided that the maximum payment under this paragraph shall not exceed an amount equal to twice the member's final year's pensionable pay less an amount equal to the member's retirement lump sum paid under regulation E6 (lump sum on retirement).

#### **Member dies with preserved pension**

**F3.**—(1) If a member leaves pensionable employment with a preserved pension under regulation L1 and dies before his pension under the scheme becomes payable, a lump sum on death shall be payable in accordance with regulation F5.

(2) The lump sum will be equal to 3 times the yearly rate of the member's preserved pension, calculated as described in regulation L1.

#### **Member dies within 12 months after leaving pensionable employment without pension or preserved pension**

**F4.**—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation L2 or before a transfer payment is made under regulation M5 (early leaver without pension or preserved pension), a lump sum on death shall be payable in accordance with regulation F5.

(3) The lump sum on death will be calculated as described in regulation F3 (member dies with preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation L1.

#### **Payment of lump sum**

**F5.**—(1) If the member dies and leaves a surviving widow or widower, the lump sum on death shall be payable to the widow or widower, unless the member has given notice to the Secretary of State that the widow or widower is not to receive the payment.

(2) Notice to the Secretary of State under paragraph (1) shall be given in writing and may similarly be cancelled.

(3) If the lump sum on death is not paid to the member's widow or widower, or if there is no surviving widow or widower, it shall be payable to the member's personal representative.

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

(5) In paragraph (4), the "specified amount" means £5,000 or any higher amount specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965 as the amount to be treated as substituted for references to £500 in section 1 of that Act<sup>(13)</sup>.

## PART G

### *Widows and widowers*

#### **Widow's pension**

**G1.**—(1) Subject to the following provisions of this regulation, if a male member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widow, the widow shall be entitled to a pension as described in whichever of regulations G2 to G6 applies.

(2) Subject to paragraphs (3) to (5)—

(a) no widow's pension shall be payable in respect of any period during which the widow and a man to whom she is not married are living together as husband and wife; and

(b) the widow shall cease to be entitled to a widow's pension if she remarries.

(3) Nothing in paragraph (2) shall affect any entitlement to a widow's guaranteed minimum pension under the scheme.

(4) The Secretary of State may pay a pension to a widow who has remarried, or who is living together as husband and wife with a man to whom she is not married, if the Secretary of State is satisfied that the widow will otherwise suffer severe financial hardship.

(5) The Secretary of State may pay a pension to a widow who has remarried if the later marriage comes to an end and the Secretary of State is satisfied that the widow will otherwise suffer hardship.

(6) The amount of any pension payable under paragraph (4) or (5) may, at the Secretary of State's discretion, be equal to, or less than, the original widow's pension and the Secretary of State may (subject to any widow's guaranteed minimum pension) vary the amount, or stop paying the pension, at any time.

(7) If a dependent child is born after the member's death, any entitlement to a widow's pension under regulation G2 (member dies in pensionable employment) or G3 (member dies after pension becomes payable) will be recalculated as if the child had been born before the member died.

#### **Member dies in pensionable employment**

**G2.**—(1) The widow's pension payable on a member's death in pensionable employment will be as described in this regulation.

(2) The widow's pension for the first 3 months after the member's death (6 months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the rate of the member's pensionable pay when he died if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with 2 years' or more qualifying service, the widow's pension will be equal to one-half of the pension that would have been payable to the member under the scheme if the member had

---

(13) 1965 c. 32.

retired through ill-health with a pension under regulation E2 (early retirement pension on grounds of ill-health) on the day he died.

(4) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with less than 2 years' qualifying service but after reaching age 60, the widow's pension will be equal to one-half of the pension that would have been payable to the member under the scheme if the member had retired with a pension under regulation E1 (normal retirement pension) on the day he died.

(5) Except while the widow's pension is payable at the rate mentioned in paragraph (2), if the member dies with less than 2 year's qualifying service and before reaching age 60, the widow will receive a pension equal to her guaranteed minimum pension under the scheme, unless the Secretary of State discharges her liability to provide such a pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

### **Member dies after pension becomes payable**

**G3.**—(1) Subject to regulation G6 (member marries after leaving pensionable employment) and regulation S4 (benefits on death in pensionable employment after pension becomes payable), the widow's pension payable on a member's death after a pension under the scheme becomes payable will be as described in this regulation.

(2) Subject to paragraph (3), the widow's pension for the first 3 months after the member's death (6 months if the member leaves at least one dependent child who is dependent on the widow) will be equal to the member's pension if that amount is greater than the amount of widow's pension and child allowance that would otherwise be payable under these Regulations.

(3) For the purpose of paragraph (2), no account will be taken of any reduction to the member's pension under regulation S2 (reduction of pension on return to NHS employment).

(4) Except while the widow's pension is payable at the rate mentioned in paragraph (2), the widow's pension will be equal to one-half of the member's pension.

(5) Where the member was in receipt of a pension payable under regulation E5 (early retirement pension with actuarial reduction), the member's pension referred to in paragraph (4) means the member's pension calculated without regard to any reduction made under regulation E5(2).

### **Member dies with preserved pension**

**G4.**—(1) Except where regulation G6 applies (member marries after leaving pensionable employment), the widow's pension payable on the death of a member with a preserved pension under regulation L1 (preserved pension) that had not become payable at the date of death will be as described in this regulation.

(2) If the member dies within 12 months after leaving pensionable employment, the widow's pension will be equal to one-half of the pension that would have been payable to the member under the scheme if the member had retired through ill-health with a pension under regulation E2 (early retirement pension on grounds of ill-health) on the day he left pensionable employment.

(3) If the member dies 12 months or more after leaving pensionable employment, the widow's pension will be equal to one-half of the member's preserved pension.

### **Member dies within 12 months after leaving pensionable employment without pension or preserved pension**

**G5.**—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation L2 or before a transfer payment is made to which regulation M5 applies (early leaver without pension or preserved pension), the widow shall be entitled to a widow's guaranteed minimum pension unless the Secretary of State discharges her liability to provide such a pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

### **Member marries after leaving pensionable employment**

**G6.**—(1) This regulation applies where the member and his wife were not married to each other during any period of pensionable employment.

(2) Subject to paragraph (3), the widow's pension will be equal to one-half of a pension calculated as described in regulation E1 (normal retirement pension) on the basis of the member's pensionable service after 5th April 1978.

(3) If the member dies after his pension under the scheme becomes payable, the widow's pension for the first 3 months after the member's death (6 months if the member dies leaving at least one dependent child dependent on the widow) will be equal to the amount of the pension that would have been payable under regulation G3 (member dies after pension becomes payable).

### **Widower's pension**

**G7.**—(1) Subject to the following provisions of this regulation, if a female member dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving widower, the widower shall be entitled to a pension as described in this regulation.

(2) Subject to paragraph (3), regulations G1 to G6 (pensions for widows) apply to the calculation and payment of pensions for widowers in like manner as they apply to pensions for widows.

(3) When calculating a widower's pension, any part of a member's benefit that is based on pensionable service before the 6th April 1988 will, subject to paragraphs (4) and (5), be disregarded.

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

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

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

(6) Any reference in these Regulations to regulations G1 to G6 means, in relation to benefits in respect of a female member, those regulations as applicable to the member's widower (if any).

### **Dependent widower's pension**

**G8.**—(1) A female member may, by giving notice in writing to the Secretary of State prior to leaving pensionable employment, nominate her husband to receive a dependent widower's pension on her death.

(2) The Secretary of State shall accept a member's nomination only if she is satisfied that the member's husband is permanently incapable of earning a living because of physical or mental infirmity and is wholly or mainly dependent on the member.

(3) If the Secretary of State has accepted a member's nomination and the member subsequently dies before her husband, the dependent widower shall be entitled to a dependent widower's pension.

(4) The dependent widower's pension will be calculated in the same way as a widow's pension under regulations G1 to G6 (pensions for widows), but based only on the member's pensionable service before 6th April 1988.

(5) If the Secretary of State has accepted a member's nomination for a dependent widower's pension and the member's pensionable service started before 25th March 1972 any lump sum payable to the member under regulation E6 (lump sum on retirement) will be reduced by an amount equal to 2 times the yearly rate of the part of the member's pension that is based on pensionable service before 25th March 1972 (except to the extent that any reduction has been off-set under regulation Q2 (right to buy an unreduced retirement lump sum)).

(6) Where regulation E2(10) or regulation L1(8) applies to a female member, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

### **Increased widower's pension**

**G9.**—(1) If a female member elected before 1st July 1989 to buy an increased widower's pension, the widower's pension described in regulation G7 will be based on pensionable service after 5th April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation 18B of the previous regulations(14) (purchase of increased widower's pension).

(2) Subject to paragraph (3), any retirement lump sum payable to a member under regulation E6 (lump sum on retirement), in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 2 times the yearly rate of the part of the member's pension that is based on pensionable service before 25th March 1972 and by the yearly rate of the part of the member's pension that is based on pensionable service after 24th March 1972 plus, in each case, the relevant daily proportion of that rate for each additional day.

(3) Where regulation E2(10) or regulation L1(8) applies to a female member, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Where the member elected to buy an unreduced retiring allowance under paragraph 3 of Schedule 7A to the previous regulations(15), regulations Q2 (right to buy an unreduced retirement lump sum) and Q7 (part payment for additional service or unreduced retirement lump sum) will apply to such election as if it had been made under regulation Q2.

(14) Regulation 18B was inserted into the previous regulations by regulation 11(2) of S.I. 1989/804.

(15) Schedule 7A was inserted into the previous regulations by regulation 11(3) of S.I. 1989/804.



## PART H

### *Child Allowance*

#### **Dependent child**

**H1.**—(1) Subject to the provisions of this regulation, “dependent child” means any child who is—

- (a) a child or grandchild of the member;
- (b) a step-child of the member by a marriage entered into before the date on which the member leaves pensionable employment or a child legally adopted by the member before that date;
- (c) a brother or sister, or a child of a brother or sister, of the member or the member’s spouse (any half-brother or step-brother being treated as a brother, and any half-sister or step-sister being treated as a sister, for this purpose); or
- (d) a child who, immediately before the member left pensionable employment, the member had intended to adopt, or a child who, at that time, had been dependent on the member for 2 years or (if less) half the child’s life;

and who satisfies the requirements of paragraph (2).

(2) The requirements of this paragraph are satisfied by any child described in paragraph (1) who is—

- (a) born before the member leaves pensionable employment and who is dependent on the member when the member dies and, if the member dies after leaving pensionable employment, is also dependent on the member when the member leaves pensionable employment; or
- (b) born one year or less after the member leaves pensionable employment and who either is dependent on the member both immediately after being born and when the member dies, or would have become dependent on the member if the member had not died before the child was born.

(3) A child is a dependent child for so long as he is—

- (a) under age 17; or
- (b) aged 17 or over and continuing in full-time education; or
- (c) aged 17 or over and participating in full-time training for a trade, profession or vocation, for which he is not receiving remuneration in excess of the allowable maximum; or
- (d) aged 17 or over and taking a break in such full-time education or training providing the Secretary of State is satisfied that the child intends to return to some such education or training.

(4) A child who is aged 17 or over and who has ceased to be a dependent child will be treated as a dependent child if he returns to full-time education, or to full-time training for a trade, profession or vocation for which he is not receiving remuneration in excess of the allowable maximum, before reaching age 21 and within 12 months after ceasing to be a dependent child.

(5) In this regulation, the “allowable maximum” means the amount to which a pension of £1702 a year beginning on 11th April 1994 would have been increased under Part I of the Pensions (Increase) Act 1971 at the date in question (calculated as if the words “for a period of not less than two years” in section 3(3)(d) of that Act were omitted), plus the yearly amount of any expenses necessarily incurred for the purposes of the education or training.

(6) A child who is incapable of earning a living because of permanent physical or mental infirmity from which he was suffering at the time the member died or from which he started to suffer whilst qualifying as a dependent child will be treated as a dependent child for so long as he remains incapable of earning a living.

## Payment of allowance

**H2.**—(1) Subject to the following provisions of this regulation, if a member dies in the circumstances described in any of regulations H3 to H7 and leaves a dependent child, the dependent child shall be entitled to a child's allowance as described in this regulation and in whichever of regulations H3 to H7 is applicable.

(2) If a dependent child is born after the member's death, a child allowance shall be payable as if the child had been born before the member died.

(3) The child allowance will be paid to the child or, where the Secretary of State so decides to some other person for the child's benefit and, where there is more than one dependent child, the allowance will be shared between them in such shares as the Secretary of State may decide from time to time.

(4) Where a child is a dependent child by virtue of regulation H1(3)(d), the child allowance shall cease to be payable after 12 months if the child has not then returned to full-time education, or full-time training for a trade, profession or vocation, but will be reinstated if the child later returns to some such education or training and the Secretary of State is satisfied that the child intended to do so from the start of the break.

(5) No allowance shall be payable to, or for the benefit of, a child who is incapable of earning a living because of permanent physical or mental infirmity for any period exceeding one month during which the child is maintained out of money provided by Parliament in a hospital or other institution.

(6) Where a child is a dependent child in relation to 2 or more members, all of whom die, a child allowance shall be payable in respect of not more than 2 of those members and, if there are more than 2 such members, shall be equal to the sum of the 2 highest allowances.

(7) The child allowance shall cease to be payable when there is no remaining dependent child.

## Member dies in pensionable employment

**H3.**—(1) The child allowance payable in the case of a member who dies whilst in pensionable employment will be as described in this regulation.

(2) Subject to paragraph (3), the allowance will be calculated, as described in whichever of paragraphs (4) or (7) apply, as a proportion of the pension that would have been payable to the member under the scheme if the member had retired through ill-health with a pension under regulation E2 (early retirement pension on grounds of ill-health) on the day he died.

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

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

(4) Subject to paragraphs (5) to (8), if the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child and one-half if there are two or more.

(5) If a widow's or widower's pension is payable at the rate mentioned in regulation G2(2), no allowance shall be payable in respect of any dependent child who is dependent on that widow or widower until the end of the first 6 months after the member's death.

(6) If a widow's or widower's pension is payable at the rate mentioned in regulation G2(2) but there is a dependent child who is not dependent on that widow or widower, the allowance in respect of that child for the first 3 months after the member's death will be equal to the rate of the member's pensionable pay when he died.

(7) If the member dies leaving a dependent child and there is no surviving parent (or spouse of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependent child and two-thirds if there are two or more, except that the allowance for the first 6 months after the member's death will be equal to the rate of the member's pensionable pay when he died.

(8) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but there is no entitlement to a widow's or widower's pension calculated under regulation G2 (member dies in pensionable employment), the allowance will be paid at the rates described in paragraph (7).

#### **Member dies after pension becomes payable**

**H4.**—(1) The child allowance payable in the case of a member who dies after a pension under the scheme becomes payable will be as described in this regulation.

(2) Subject to paragraph (8), the allowance will be calculated, as described in whichever of paragraphs (3) or (4) apply, as a proportion of the amount of the member's pension or, if greater, the amount that the member's pension would have been if it had been based on the shorter of—

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

(3) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent), the allowance will, subject to paragraphs (5) to (7), be equal to one-quarter of the pension described in paragraph (2) if there is only one dependent child and one-half if there are two or more.

(4) If the member dies leaving a dependent child and there is no surviving parent (or spouse of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependent child and two-thirds if there are two or more, except that the allowance for the first 6 months after the member's death will be equal to the member's pension, calculated without regard to any reduction made under regulation S2 (reduction of pension on return to NHS employment).

(5) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but there is no entitlement to a widow's or widower's pension calculated under regulation G3 (member dies after pension becomes payable), the allowance will be paid at the rates described in paragraph (4).

(6) If a widow's or widower's pension is payable at the rate mentioned in regulation G3(2), no allowance shall be payable in respect of any dependent child who is dependent on the widow or widower until the end of the first 6 months after the member's death.

(7) If a widow's or widower's pension is payable at the rate mentioned in regulation G3(2) but there is a dependent child who is not dependent on that widow or widower, the allowance in respect of that child for the first 3 months after the member's death will be equal to the rate of the member's pension.

(8) Where the member was in receipt of a pension payable under regulation E5 (early retirement pension with actuarial reduction), the member's pension referred to in paragraph (2) means the member's pension calculated without regard to the reduction made under regulation E5(2).

#### **Member dies with preserved pension**

**H5.**—(1) The child allowance payable on the death of a member with a preserved pension under regulation L1 that has not become payable will be as described in this regulation.

(2) If the member dies within 12 months after leaving pensionable employment, the allowance will be calculated, as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the pension described in regulation H3(2) and, where applicable, H3(3) as if the member had died on the day he left pensionable employment.

(3) If the member dies 12 months or more after leaving pensionable employment, the allowance will be calculated, as described in whichever of paragraphs (4) or (5) apply, as a proportion of the amount of the member's preserved pension or, if greater, the amount that the preserved pension would have been if it had been based on the shorter of—

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

(4) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2) or (3) (whichever is applicable) if there is only one dependent child and one-half if there are two or more.

(5) If the member dies leaving a dependent child and there is no surviving parent (or spouse of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) or (3) (whichever is applicable) if there is only one dependent child and two-thirds if there are two or more.

(6) If the member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but there is no entitlement to a widow's or widower's pension calculated under regulation G4 (member dies with preserved pension), the allowance will be paid at the rate described in paragraph (5).

#### **Member dies within 12 months after leaving pensionable employment without pension or preserved pension.**

**H6.**—(1) The child allowance payable in a case where a member leaves pensionable employment, without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1, and dies within 12 months after leaving and before receiving a refund of contributions under regulation L2, will be as described in this regulation.

(2) The child allowance will be calculated as described in regulation H5 (member dies with preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation L1.

#### **Dependent child not being maintained by surviving parent or spouse of a parent**

**H7.**—(1) If a member dies leaving a dependent child and there is a surviving parent (or spouse of a parent) but that dependent child is not being maintained by the surviving parent (or spouse of a parent), the Secretary of State may increase the amount of the child allowance that would otherwise be payable under these Regulations.

(2) The allowance may, at the Secretary of State's discretion, be increased up to an amount equal to the amount that would have been payable if there were no surviving parent (or spouse of a parent).

## PART J

### *Allocation to a spouse or dependant*

#### **Allocation of pension**

**J1.**—(1) Subject to the following provisions of this regulation, a member may elect to allocate part of his pension under the scheme so as to provide, following his death, a pension for a spouse or a dependant.

(2) Any pension provided for a spouse under this regulation shall be payable in addition to any other widow's or widower's pension payable under these Regulations.

(3) Any pension provided under this regulation will be calculated in accordance with tables prepared by the Government Actuary.

(4) A member wishing to allocate part of his pension under this regulation may elect to do so—

- (a) on, or within one month after, the date on which a pension becomes payable to him under the scheme; or
- (b) if in pensionable employment, at any time after reaching age 60 (55 for special class officers) and completing 40 years' pensionable service; or
- (c) if in pensionable employment, at any time after reaching age 65 (60 for special class officers).

(5) A member wishing to allocate part of his pension as described in this regulation shall do so by giving notice in writing to the employing authority on the form provided, giving such information as the Secretary of State may require.

(6) The Secretary of State shall not accept an election unless satisfied that the member is in good health.

(7) If a member allocates part of his pension as described in this regulation and then dies after the pension becomes payable, the amount of pension already paid to the member under the scheme will be treated, for the purpose of calculating the lump sum on death payable under regulation F2 (member dies after pension becomes payable), as including the amount of the additional pension that would have been paid to the member if the member had not allocated part of his pension.

#### **Limits on allocation of pension**

**J2.**—(1) A member may not allocate more than one-third of his pension to provide a pension on his death for a spouse or a dependant and must keep a pension at least equal to his guaranteed minimum pension.

(2) A member may not allocate so much pension as to provide a bigger dependent's pension or spouse's pension under regulation J1 than the pension he has kept for himself.

(3) The part of a member's pension that is allocated must be an exact number of pounds and must be sufficient to provide a pension for the dependent or spouse of at least £260 a year or, if greater, of the minimum amount that cannot be treated as trivial for the purposes of regulation T7 (commutation of trivial pensions).

(4) If a member elects to allocate part of his pension in the circumstances described in regulation J1(4)(b) or (c) and then dies before his pension under the scheme becomes payable the member will be treated, for the purposes of paragraphs (1) to (3) above, as entitled to the pension he would have received if he had retired immediately before his death.

**Date on which allocation has effect**

**J3.**—(1) An election to allocate shall have effect, and may not be withdrawn or cancelled, once it has been accepted by the Secretary of State.

(2) The allocation will not take effect if—

- (a) the member dies on or before the day on which the Secretary of State accepts the member's election;
- (b) the dependant or spouse dies before the member is told that the Secretary of State has accepted the election; or
- (c) the member withdraws his application before it is accepted by the Secretary of State.

## PART K

### *Contracting-out*

**Contracting-out requirements to be overriding**

**K1.**—(1) The scheme will be administered in conformity with the contracting-out requirements and regulations K2 to K7 override any inconsistent regulations except regulation T7 (commutation of trivial pensions).

**Guaranteed minimum pensions**

**K2.**—(1) This regulation applies where the member has a guaranteed minimum, in relation to the pension provided for the member under the scheme, in accordance with section 14 of the Pension Schemes Act 1993 (earner's guaranteed minimum).

(2) The weekly rate of the member's pension from State pension age will not be less than the member's guaranteed minimum, except that—

- (a) payment may, at the discretion of the Secretary of State, be postponed for up to 5 years if the member remains in NHS employment, or for any period if the member consents; and
- (b) payment may be reduced or suspended under regulation S1 or S2 (members who return to NHS employment after becoming entitled to a pension) if the member returns to NHS employment,

in either of which cases the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement).

(3) If the member is a man and dies leaving a widow, the weekly rate of the widow's pension will not be less than one-half of the member's guaranteed minimum.

(4) If the member is a woman and dies leaving a widower, the weekly rate of the widower's pension will not be less than one-half of the part of the member's guaranteed minimum that is attributable to earnings for the tax year 1988–89 and subsequent tax years.

(5) The part of any guaranteed minimum pension that is attributable to earnings for the tax year 1988–89 and subsequent tax years will be increased each year by the percentage specified in any order made by the Secretary of State under section 109 of the Pension Schemes Act 1993 (annual increases of guaranteed minimum pensions).

(6) If, on leaving pensionable employment, a member becomes entitled to a refund of contributions under regulation L2 or exercises a right to require a transfer or buy-out in accordance with regulation M1 (member's right to transfer or buy-out) but, in either case, remains entitled to a guaranteed minimum pension, no benefit will be payable on the member's death, except for a widow's or widower's pension of the amount described in paragraph (3) or (4) as the case may be.

### **Late retirement**

**K3.** If a member's pension is postponed for more than 7 weeks after State pension age, or is reduced or suspended after it becomes payable, the member's guaranteed minimum pension, as increased under section 109 of the Pension Schemes Act 1993 (annual increases of guaranteed minimum pensions), will be increased by 1/7th per cent. for each complete 7 days of postponement.

### **Early leavers**

**K4.—**(1) Subject to paragraph (2), if a member leaves contracted-out employment under the scheme before State pension age, the member's guaranteed minimum pension at the date of leaving will be increased, when the member reaches State pension age or dies (if earlier), by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992<sup>(16)</sup> (revaluation of earnings factors) to come into force before the tax year in which the member reaches State pension age or dies (if earlier).

(2) If a guaranteed minimum pension is to be transferred to another scheme, or bought out by a buy-out policy, under which early leavers' guaranteed minimum pensions are increased by a method other than that described in paragraph (1), the Secretary of State may adopt that other method for the guaranteed minimum pension in question.

(3) If a member returns to contracted-out employment under the scheme within 6 months after leaving, the two periods of contracted-out employment will be treated as continuous, unless the first period is covered by—

- (a) a state scheme premium under Chapter III of Part III of the Pension Schemes Act 1993,
- (b) a transfer to another occupational pension scheme or to a personal pension scheme, or
- (c) any guaranteed minimum pension being bought out under a buy-out policy.

### **Guaranteed minimum pensions transferred to the scheme**

**K5.—**(1) Where a guaranteed minimum pension has been transferred to the scheme and the member subsequently leaves contracted-out employment under the scheme, the guaranteed minimum pension transferred to the scheme will be increased for each complete tax year after the date on which the member left contracted-out employment under the scheme in which the transferred guaranteed minimum pension accrued, until the member reaches State pension age or dies (if earlier).

(2) If the transfer is from another occupational pension scheme, the guaranteed minimum pension will be increased by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches State pension age or dies (if earlier).

(3) If the transfer is from a buy-out policy, the guaranteed minimum pension will be increased by the same method as was in use under the policy or, if the Secretary of State so determines, by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992 (revaluation of earnings factors) to come into force before the tax year in which the member reaches State pension age or dies (if earlier).

### **Protected rights transferred to the scheme**

**K6.—**(1) Where protected rights have been transferred to the scheme from another occupational pension scheme or a personal pension scheme, the protected rights will be used to provide guaranteed minimum pensions equal to those to which the member and the member's spouse would have been treated as entitled under the transferring scheme had the transfer not been made.

---

(16) 1992 c. 5.

(2) Any guaranteed minimum pensions to which a member and his spouse are entitled by virtue of paragraph (1) will be revalued as described in regulation K5(2).

### **State scheme premiums**

**K7.**—(1) The Secretary of State may discharge her liability to provide any guaranteed minimum pension by paying a state scheme premium under Chapter III of Part III of the Pension Schemes Act 1993.

(2) Where a member, or a member's widow or widower, is entitled to a pension under the scheme in respect of a period for which a contributions equivalent premium has been paid under section 55(2) of the Pension Schemes Act 1993, the pension will be reduced by the amount of the guaranteed minimum pension that would have been payable under the scheme to the member, widow or widower, as the case may be, if the contributions equivalent premium had not been paid.

## **PART L**

### *Early leavers*

#### **Preserved pension**

**L1.**—(1) Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to a pension under any of regulations E1 to E5 shall be entitled to receive a pension and retirement lump sum under this regulation from age 60 if—

- (a) the member leaves with at least 2 years' qualifying service, or
- (b) a transfer payment has been made to the scheme in respect of the member's rights under a personal pension scheme.

(2) The pension under this regulation will be calculated as described in regulation E1 (normal retirement pension) and the retirement lump sum will be calculated as described in regulation E6.

(3) The member shall be entitled to receive the pension and retirement lump sum before age 60 if—

- (a) the member is in NHS employment and the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of efficiently discharging the duties of that employment;
- (b) the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes him permanently incapable of engaging in regular employment; or
- (c) some other pension becomes payable to the member under any of regulations E1 to E5.

(4) If the member is in NHS employment (whether with the same or another employing authority) when he reaches age 60, the pension and lump sum on retirement will not become payable until the member leaves NHS employment or reaches age 70, whichever is the earlier.

(5) Subject to paragraph (6), where on or after the coming into force of these Regulations a member becomes entitled to a pension under paragraph (3)(a) or (b), the Secretary of State may discharge her liability for that pension by the payment of a lump sum.

(6) A lump sum payment under paragraph (5) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member and the member was in pensionable employment on or after the coming into force of these Regulations.

(7) For the purpose of paragraph (6), the Secretary of State may require whatever medical evidence that she considers necessary.



(8) The amount of the lump sum payable under paragraph (5) will be equal to 5 times the difference between the yearly rate of the member's pension (calculated in accordance with this regulation) and the yearly rate of the member's guaranteed minimum pension or, if lower, twice the member's final year's pensionable pay (less the member's lump sum on retirement payable under this regulation) and shall be payable in addition to the lump sum on retirement payable under this regulation, which shall not be subject to any reduction such as is described in regulation E6(3).

### **Refund of contributions**

**L2.**—(1) A member who leaves pensionable employment without becoming entitled to a pension under regulations E1 to E5 or a preserved pension under regulation L1 shall be entitled to receive a refund of his contributions, less tax at 20 per cent. or such other rate as applies from time to time.

(2) A member who wishes to take a refund of contributions must apply in writing to the Secretary of State.

(3) If the member's employment was contracted-out by reference to the scheme, the member (and the member's spouse, if any) will remain entitled to a guaranteed minimum pension under the scheme, unless the Secretary of State discharges her liability to provide a guaranteed minimum pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

(4) If a contributions equivalent premium is paid, the member's refund of contributions will be reduced by the amount recoverable under section 61 of the Pensions Schemes Act 1993 (deduction of contributions equivalent premium from refund of contributions).

(5) If a contributions equivalent premium is not paid, the member's refund of contributions will be reduced by the amount that the Secretary of State estimates would have been recoverable under section 61 of the Pensions Schemes Act 1993 if the premium had been paid.

(6) A member shall not be entitled to a refund of contributions for any period of service in respect of which the Secretary of State has received a transfer payment in respect of his rights under a personal pension scheme.

(7) Where a refund of contributions is made, the Secretary of State shall be discharged from any obligation to provide benefits under the scheme except to any extent provided for under paragraph (3).

### **Payment of interest with refund of contributions**

**L3.**—(1) Compound interest will be added to a refund of contributions under regulation L2, except where the employment was terminated by reason of misconduct or inefficiency or at the member's request.

(2) Subject to paragraph (3), where compound interest is added to a refund of contributions, it will be calculated at the rate of 2.5 per cent. per year, for the period starting on the 1st April after the contributions were paid and ending on the day the member leaves pensionable employment.

(3) In the case of any contributions paid under another enactment or scheme and included in a transfer payment to the scheme, interest for the period before the transfer payment was accepted will be calculated as described in the enactment or scheme from which the transfer payment was received.

### **Early leavers returning to pensionable employment**

**L4.**—(1) This regulation applies to any member who leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 and later returns to pensionable employment before becoming entitled to receive a pension under the scheme.

(2) If the member leaves pensionable employment with a preserved pension under regulation L1 and then returns to pensionable employment within 12 months after leaving, the member will cease to be entitled to the preserved pension under regulation L1 and the member's pensionable service before and after the break in pensionable employment will be treated as continuous.

(3) Subject to paragraph (5), if the member leaves pensionable employment with a preserved pension under regulation L1 and then returns to pensionable employment 12 months or more after leaving—

- (a) the member's pensionable service before and after the break in pensionable employment will be treated separately unless, when the member becomes entitled to receive a pension or the member dies (whichever occurs first), it would be more favourable to the member, or the member's spouse, to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous; and
- (b) if the member becomes entitled to receive a pension under regulation E2 (early retirement pension on grounds of ill-health), the pensionable service upon which that pension is based will be increased as described in paragraphs (4) to (6) of that regulation if the member's pensionable service before and after the break in pensionable employment is treated as continuous, but there will be no increase to any of the member's pensionable service if the member's pensionable service before and after the break is treated separately.

(4) Subject to paragraph (5), if the member leaves pensionable employment without becoming entitled to a preserved pension and then returns to pensionable employment within 12 months after leaving, the member's pensionable service before and after the break in pensionable employment will be treated as continuous.

(5) Where paragraph (4) applies and the member has received a refund of contributions under regulation L2 in respect of pensionable service before the break in pensionable employment, the member's pensionable service before and after the break will be treated as continuous only if, within 6 months after rejoining the scheme, the member pays to the Secretary of State an amount equal to the refund of contributions (including any interest added under regulation L3).

(6) If a member leaves pensionable employment with a preserved pension and, after returning, again leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E5, the member will be entitled to a preserved pension under regulation L1 in respect of the period after the break in pensionable employment whether or not he has 2 years' qualifying service in respect of that period.

(7) A member whose pensionable service before and after a break in pensionable employment is treated as continuous and who, before the break, was paying for additional benefits by regular additional contributions under regulation Q6 (paying for additional service or unreduced retirement lump sum by regular additional contributions) must continue to pay for those additional benefits after the break.

(8) If a member's pensionable service before and after a break in pensionable employment is treated separately, the member's benefits in respect of each period of pensionable employment will be calculated separately, by reference to the member's pensionable service and final year's pensionable pay in respect of that period.

## PART M

### *Transfers and buy-outs*

#### **Member's right to transfer or buy-out**

**M1.**—(1) A member who leaves pensionable employment with a preserved pension before reaching age 60 may require the Secretary of State to transfer or buy-out his rights under the scheme as described in this regulation.

(2) Subject to paragraphs (3) and (4), the member may require the Secretary of State to use the cash equivalent of his rights under the scheme—

- (a) to purchase one or more buy-out policies from one or more insurance companies chosen by the member; or
- (b) to acquire rights under another occupational pension scheme, or under a personal pension scheme, that satisfies the requirements of Chapter IV of Part IV of the Pension Schemes Act 1993 (transfer values); or
- (c) in any combination of the ways described in sub-paragraphs (a) and (b);

provided that the right is exercised in relation to each and every portion of the cash equivalent.

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

- (a) if the member leaves pensionable employment on or after 1st January 1986; and
- (b) where those rights are to be transferred to a personal pension scheme, in relation to any period of service of 2 years or more falling before 6th April 1988, if a period of not less than one month has elapsed between the date the member left NHS employment and the date of commencement of any further NHS employment.

(4) A member who leaves pensionable employment with a preserved pension after reaching age 59 may require the Secretary of State to use the cash equivalent only to acquire rights under another occupational pension scheme.

(5) Where a member leaves pensionable employment by opting-out and on so doing becomes entitled to a preserved pension under regulation L1 then, if the member has at least 2 years' service before 6th April 1988, the member's right to require a transfer or buy-out will be limited to the cash equivalent of the part of his rights that is attributable to service after 5th April 1988 and the member will acquire a right to the cash equivalent of his remaining rights only if he actually leaves NHS employment before reaching age 60.

(6) A member loses the right referred to in paragraph (1) if any pension under the scheme becomes payable to the member before the member reaches age 60.

(7) Where the Secretary of State has done what is needed to carry out what the member requires under this regulation, the Secretary of State will be discharged from any obligation to provide benefits for or in respect of the member under the scheme, except that the Secretary of State will continue to be liable to provide a guaranteed minimum pension in respect of the member where regulation M3(2) applies (unless the Secretary of State discharges that liability under regulation K7 (State scheme premiums)).

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

**M2.**—(1) A member shall exercise the right to require a transfer or buy-out by making an application in writing to the Secretary of State.

(2) A member who requires the cash equivalent to be used to acquire rights under another occupational pension scheme may exercise the right at any time before reaching age 60.

(3) Subject to paragraph (4), a member who requires all or part of the cash equivalent to be used to purchase one or more buy-out policies or to acquire rights under a personal pension scheme may exercise the right at any time before reaching age 59.

(4) A member who leaves pensionable employment less than 6 months before his 59th birthday may exercise the right at any time up to 6 months after leaving.

(5) Subject to paragraph (6), a member may withdraw an application to transfer or buy-out his rights by giving notice in writing to the Secretary of State that he no longer wishes to exercise that right.

(6) The member may not withdraw the application after the Secretary of State, in order to comply with what the member previously required, has entered into an agreement with a third party to use the member's cash equivalent in a way specified in regulation M1(2).

(7) A member who withdraws an application may make another.

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

**M3.**—(1) Subject to paragraphs (2) and (3), the member's cash equivalent will be equal to the capitalised value of all the member's accrued rights to benefits under the scheme and any associated rights under Part I of the Pensions (Increase) Act 1971, calculated and verified as required by Chapter IV of Part IV of the Pension Schemes Act 1993 (transfer values).

(2) If the member requires the cash equivalent to be used to acquire rights under an occupational pension scheme which is not a contracted-out scheme within the meaning of Chapter I of Part III of the Pension Schemes Act 1993 or under a personal pension scheme which is not an appropriate scheme within the meaning of that Chapter and the trustees or managers of the receiving scheme are unable or unwilling to accept liability for the member's rights to guaranteed minimum pensions the cash equivalent will be reduced by an amount sufficient for the Secretary of State to meet her liability to provide guaranteed minimum pensions in respect of the member.

(3) If the cash equivalent is not to be used to acquire rights in a scheme that participates in the Public Sector Transfer Arrangements and the Secretary of State fails, without reasonable excuse, to do what is needed to carry out what the member requires within 6 months of the member's leaving pensionable employment or, if later, exercising the right, the member's cash equivalent will be increased in accordance with paragraph (4).

(4) The amount of the increase under paragraph (3) will be equal to the greater of—

- (a) interest on the cash equivalent at the same rate as that payable for the time being on judgment debts by virtue of section 17 of the Judgment Act 1838<sup>(17)</sup> (judgment debts to carry interest), calculated on a daily basis over the period between the date of the member's leaving pensionable employment or, if later, exercising the right to transfer or buy-out and the date on which the Secretary of State carries out what the member requires; and
- (b) the amount (if any) by which the cash equivalent is less than what it would have been if the date of the member's leaving pensionable employment or, if later, exercising the right, had been the date on which the Secretary of State carries out what the member requires.

(5) Subject to paragraph (7), a member's cash equivalent will be at least equal to the amount of any transfer payments accepted in respect of the member under regulation N1(4) (transfers from other pension arrangements), plus the amount of the member's contributions to the scheme.

<sup>(17)</sup> 1 & 2 Vict. c.110. Section 17 is amended by the Civil Procedure Acts Repeal Act 1879 (c. 59) Schedule Part 1 and by article 2 of S.I. 1977/141.

(6) Subject to paragraph (7), if a member's cash equivalent is used to acquire rights under another occupational pension scheme, any part of the cash equivalent that relates to service before 29th January 1988 will be calculated as described in the previous Regulations as applicable immediately before that date, if this would be more favourable to the member.

(7) Paragraphs (5) and (6) do not apply where the member requires the cash equivalent to be used to acquire rights under another occupational pension scheme that participates in the Public Sector Transfer Arrangements.

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

#### **Time limit for doing what member requires**

**M4.**—(1) Subject to paragraphs (2) and (3), the Secretary of State shall do what is needed to carry out what the member requires under regulation M1 within 12 months after receiving the member's application.

(2) If the member leaves pensionable employment within 6 months before reaching age 59 and the Secretary of State receives the member's application after the member reaches age 59 but within 6 months after the member's leaving, the Secretary of State shall do what is needed to carry out what the member requires under regulation M1 (member's right to transfer or buy-out) by the date on which the member reaches age 60.

(3) If disciplinary or court proceedings are commenced against the member within 12 months after the member leaves pensionable employment and it appears to the Secretary of State that the proceedings may lead to all or part of the member's benefits being forfeited under regulation T6 (loss of rights to benefits), the Secretary of State may defer doing what is needed to carry out what the member requires until the date 3 months after the conclusion of those proceedings (including any proceedings on appeal) where that date is later than the date which would otherwise apply under paragraph (1) or (2) above.

#### **Early leaver without pension or preserved pension**

**M5.**—(1) Subject to paragraphs (2) and (3), this regulation applies where a member leaves pensionable employment before reaching age 60, without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1.

(2) In a case where a member has received a refund of contributions under regulation L2, this regulation applies only if, before exercising the right to transfer or buy-out, the member pays to the Secretary of State an amount equal to that refund of contributions (including any interest).

(3) In a case where a member leaves pensionable employment with a pension under regulation E3 (early retirement pension on grounds of redundancy), this regulation applies only if, before exercising the right to transfer or buy-out, the member pays to the Secretary of State an amount equal to the total benefits already paid to the member under the scheme.

(4) Where this regulation applies the member will be treated, for the purposes of regulations M1 to M4, as if he had left pensionable employment with a preserved pension, except that—

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

scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

(5) A member who pays an amount to the Secretary of State as described in paragraphs (2) or (3) of this regulation will be treated, for the purposes of regulation M1(6), as if the refund of contributions or, as the case may be, the benefits represented by that amount had never become payable to the member.

#### **Transfers in respect of more than one member**

**M6.**—(1) If two or more members leave pensionable employment, join another occupational pension scheme and exercise a right to transfer to that scheme under regulation M1 (member’s right to transfer or buy-out), the Secretary of State may, after taking advice from the Government Actuary, make a single transfer payment to that scheme in respect of those members.

(2) The Secretary of State will calculate the amount of any transfer payment under this regulation after taking advice from the Government Actuary.

#### **Waiver of transfer payment**

**M7.** If an occupational pension scheme waives payment of any cash equivalent or transfer payment that would otherwise be payable to it under regulations M1 to M6, the payment will nevertheless be treated as made for the purposes of these Regulations.

## **PART N**

### *Transfers from other pension arrangements*

#### **Member’s right to transfer accrued rights to benefits to the scheme**

**N1.**—(1) Within 12 months after joining the scheme, a member in pensionable employment may, in writing, request the Secretary of State to accept a transfer payment in respect of the member’s rights under another occupational pension scheme, a personal pension scheme, or a buy-out policy (but not in respect of rights under a scheme that is approved by the Commissioners of Inland Revenue by virtue of section 591(2)(h) of the Income and Corporation Taxes Act 1988 (free-standing AVC schemes)).

(2) The Secretary of State shall not accept the transfer payment unless—

- (a) the transferring scheme or insurance company provides all the information about the member’s rights that the Secretary of State reasonably requires; and
- (b) the amount of the transfer payment is at least equal to the yearly rate of the guaranteed minimum pension for which the Secretary of State would be liable as a result of accepting the transfer payment, multiplied by the factor appropriate to the member’s age, as set out in the following table.

<i>member’s age</i>	<i>appropriate factor</i>
29 or under	8
30 — 39	9
40 — 49	10
50 or over	12

(3) The Secretary of State shall not accept the transfer payment if—

- (a) the member joins the scheme, or requests the Secretary of State to accept the transfer payment, after reaching age 60, or
- (b) the request is made following a notice given under regulation B4(5) (opted-out person rejoining the scheme) in circumstances where the member had a previous opportunity to request the Secretary of State to accept a transfer payment in respect of those same rights but did not take that opportunity.

(4) If the Secretary of State accepts the transfer payment, the member will be credited with an additional period of pensionable service as described in whichever of regulations N2 (transfers made under the Public Sector Transfer Arrangements) and N3 (transfers that are not made under the Public Sector Transfer Arrangements) is applicable.

(5) For the purposes of calculating a member's final year's pensionable pay, any period of pensionable service with which a member is credited in respect of a transfer payment will be treated as pensionable employment and the pensionable pay by reference to which that service is calculated will be treated as pensionable pay received in respect of that employment.

### **Transfers made under the Public Sector transfer Arrangements**

**N2.**—(1) Subject to paragraph (2), if the transfer is from another occupational pension scheme that participates in the Public Sector Transfer Arrangements, the additional period of pensionable service to be credited to the member in respect of the transfer payment will be equal to the period that, if used to calculate a cash equivalent under regulation M3 (amount of member's cash equivalent), would produce an amount equal to the amount of the transfer payment.

(2) Paragraph (1) applies only if the transfer payment—

- (a) represents all the member's rights to benefits under the transferring scheme; and
- (b) is calculated in a manner that is consistent with the actuarial methods and assumptions used by the Secretary of State to calculate cash equivalents under regulation M3 in the case of transfers under the Public Sector Transfer Arrangements.

(3) For the purpose of calculating the additional period of pensionable service under paragraph (1), regard shall be had to the member's age and marital status, and to the yearly rate of pay and any other factor notified to the Secretary of State by the trustees or managers of the transferring scheme as having been taken into account for the purpose of calculating the amount of the transfer payment.

### **Transfers that are not made under the Public Sector Transfer Arrangements**

**N3.**—(1) Except where regulation N2 (transfers made under the Public Sector Transfer Arrangements) applies, the additional period of pensionable service to be credited to the member in respect of the transfer payment will be calculated in a manner that is consistent with the actuarial methods and assumptions used by the Secretary of State to calculate cash equivalents under regulation M3 (amount of member's cash equivalent), in the case of transfers that are not made under the Public Sector Transfer Arrangements.

(2) When calculating the additional period of pensionable service under paragraph (1), due allowance shall be made for the expected increase in the pensionable pay of all members of the same age as the member in respect of whom the transfer payment is being accepted between the date on which that member joins the scheme (or the date on which the transfer payment is accepted, if that is more than 12 months later) and the date on which the member will reach age 60.

**Transfers in respect of more than one member**

**N4.**—(1) The Secretary of State may, after taking advice from the Government Actuary, accept a single transfer payment from another occupational pension scheme, in respect of two or more members, if each of those members consent.

(2) Where the Secretary of State accepts a single transfer payment in respect of two or more members, each such member shall be credited with an additional period of pensionable service, calculated by the Secretary of State on the advice of the Government Actuary.

**Waiver of transfer payments**

**N5.**—(1) The Secretary of State may waive payment of any transfer payment.

(2) If the Secretary of State waives payment of any transfer payment, regulations N1 to N4 will apply as if the transfer payment had been accepted.

**PART P***Members absent from work***Absence because of illness or injury or maternity leave**

**P1.**—(1) This regulation applies to members who are absent from work because of illness or injury or who are on maternity leave.

(2) A period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to the scheme.

(3) If the earnings used to calculate a member's pensionable pay are reduced during a period of absence to which this regulation applies—

- (a) for the purpose of calculating the member's contributions to the scheme (other than by way of payment for additional service or unreduced retirement lump sum), pensionable pay for the period of absence will be calculated on the basis of the member's reduced earnings; and
- (b) for all other purposes, the member's pensionable pay for the period of absence will be calculated as if no reduction were being made.

(4) If the earnings used to calculate a member's pensionable pay cease during a period of absence to which this regulation applies—

- (a) subject to sub-paragraph (b), the member will be treated as having left pensionable employment except that no refund of contributions or other benefit will be payable until the member actually leaves pensionable employment;
- (b) in the case of a woman on maternity leave who paid contributions on the basis of reduced earnings in accordance with paragraph 3(a), contributions shall continue to be payable at that rate.

(5) If a member fails to pay any contributions which are required to be paid to the scheme in respect of a period of absence to which this regulation applies, the member will be treated as having left pensionable employment except that no refund of contributions or other benefit shall be payable unless the member actually leaves pensionable employment.

(6) If a member to whom this regulation applies leaves pensionable employment or, by virtue of paragraph (4)(a) or (5), is treated as having left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment regulation L4(4) (early leavers returning to pensionable employment) will apply as if the reference to 12 months was a reference to 3 years.



(7) The benefits payable on the death of a member whose earnings ceased during a period of absence to which this regulation applies will be calculated as if the member had died in pensionable employment on the day before his earnings ceased.

### **Other leave of absence**

**P2.**—(1) This regulation applies to members who are on leave of absence from work for reasons other than those referred to in regulation P1.

(2) A period of absence to which this regulation applies will count as pensionable service for so long as the member contributes to the scheme.

(3) If the earnings used to calculate the member's pensionable pay are reduced or cease during a period of absence to which this regulation applies pensionable pay (and, consequently, the member's contributions and benefits) for the period of absence will be calculated on the basis of the member's earnings immediately before the absence started.

## **PART Q**

### *Right to buy additional service and unreduced retirement lump sum*

#### **Right to buy additional service**

**Q1.**—(1) Subject to the provisions of this regulation and regulations Q3 (2) and (6) (electing to buy additional service), Q4 (paying by single payment) and Q6 (paying by regular additional contributions), a member in pensionable employment may increase his rights to benefits under the scheme, by buying additional service.

(2) The member may choose to pay for additional service by making a single payment in accordance with regulation Q4 or by making regular additional contributions in accordance with regulation Q6 or partly in one way and partly in the other.

(3) The member must exercise his right to buy additional service within the time limits described in regulation Q4 or, as the case may be, regulation Q6 and before becoming entitled to a pension under regulation E1 (normal retirement pension) or L1 (preserved pension).

(4) Any period of additional service that the member buys will count as pensionable service for all of the purposes of the scheme, except—

- (a) for the purpose of calculating whether and, if so, by how much the member's pensionable service should be (or, where the member dies in pensionable employment, would have been) increased as described in regulation E2 (early retirement pension on grounds of ill-health); and
- (b) for the purpose of calculating the member's qualifying service in accordance with regulation C3 (meaning of qualifying service).

(5) For the purposes of regulation G7 (widower's pension), if a woman exercised her right to buy additional service before 6th April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6th April 1988.

(6) Subject to paragraph (7) and regulation C2(3), the maximum period of additional service that the member may buy is the period set out in the following table opposite the number of years of pensionable service that the member could complete if he stayed in pensionable employment until age 60. A member who could not complete at least 9 years pensionable service prior to reaching age 60 may not buy any additional service.

<i>Potential years of pensionable service</i>	<i>Maximum period of additional service that member may buy</i>
9	1 year
10	2 years
11	3 years
12	4 years
13	5 years
14	7 years
15	9 years
16	11 years
17	13 years
18	15 years
19	17 years
20 or more	20 years

(7) The member's right to buy additional service is subject to any limits imposed by the Inland Revenue.

(8) Where a special class officer buys a period of additional service, the amount of the benefits attributable to that period of additional service will be those that would be payable in the case of a member who is not a special class officer.

(9) Where a member, following a break in pensionable employment in respect of which he received a refund of contributions which has not been repaid, rejoins the scheme, he may buy all or any part of the previous pensionable service provided that the employment giving rise to that service was not employment to which the contracting-out requirements applied.

### **Right to buy an unreduced retirement lump sum**

**Q2.**—(1) Subject to the provisions of this regulation and regulations Q3(2) and (6) (electing to buy unreduced retirement lump sum), Q5 (paying by single payment), and Q6 (paying by regular additional contributions), a member in pensionable employment whose pensionable service started before 25th March 1972 and who is, or has been, married, may make payments to the scheme to offset all or part of any reduction in the lump sum payable to the member under regulation E6 (lump sum on retirement).

(2) The member may choose to pay for an unreduced retirement lump sum by making a single payment in accordance with regulation Q5 or by making regular additional contributions in accordance with regulation Q6 or partly in one way and partly in the other.

(3) The member must exercise the right to buy an unreduced retirement lump sum within the time limits described in regulation Q5 or, as the case may be, regulation Q6 and before the lump sum becomes payable.

### **Electing to buy additional service or unreduced retirement lump sum**

**Q3.**—(1) A member electing to buy additional service or unreduced retirement lump sum shall do so by giving notice in writing to the employing authority on the form provided, giving such information as may be required.

(2) A member may not exercise a right to buy additional service or unreduced retirement lump sum during a period of absence from work or while his earnings are reduced or have ceased.

(3) For the purposes of these Regulations, the date on which a member elects to buy additional service or unreduced retirement lump sum means the date on which the employing authority receives the member's completed form exercising that right.

(4) If a member who elects to pay for additional service or unreduced retirement lump sum by a single payment leaves pensionable employment within 3 months after starting that employment, the election will cease to have effect.

(5) For the purposes of paragraph (4), and notwithstanding regulation P1(5) (absence through illness or injury or maternity), a member whose earnings cease during a period of absence from work will not be treated as if he had left pensionable employment.

(6) The Secretary of State shall not accept an election from a member who wishes to pay for additional service or unreduced retirement lump sum by additional regular contributions unless satisfied that the member is in good health and that there is no reason why the member's health should prevent him from paying the contributions for the whole period for which he has chosen to pay them.

#### **Paying for additional service by single payment**

**Q4.**—(1) Subject to paragraph (2), a member who wishes to pay for additional service by a single payment must elect to do so within 12 months of first joining the scheme.

(2) A member who, following a break in pensionable employment, rejoins the scheme, may pay for additional service by a single payment if—

- (a) he again becomes a member having become entitled, in respect of earlier pensionable service, to a pension under regulation L1 (preserved pension) which has not become payable,
- (b) he again becomes a member having, in respect of earlier pensionable service, received a refund of contributions which has not been repaid, or
- (c) he again becomes a member having, in respect of earlier pensionable service, required a transfer of rights to another scheme in circumstances where those other rights are preserved in that other scheme,

and he elects to do so within 12 months of rejoining the scheme.

(3) The amount of a single payment for additional service will be calculated in accordance with Table 1 of Schedule 1.

(4) For the purposes of Table 1 of Schedule 1, "remuneration" means, subject to paragraph (5), the yearly average of a member's pensionable pay (ignoring any reduction or cessation of earnings as a result of absence or otherwise) in respect of the 3 months' pensionable employment immediately preceding the date on which the member elects to buy the additional service or unreduced retirement lump sum.

(5) If the member has not been in pensionable employment for 3 months before electing to buy the additional service or unreduced retirement lump sum, "remuneration" means the yearly average of the member's pensionable pay in respect of the first 3 months' pensionable employment.

(6) The member must make any single payment for additional service within 3 months after electing to do so or, if later, within 6 months after starting pensionable employment.

(7) Where a person elects to buy additional service in the circumstances described in regulation Q1(9), the cost will be calculated as one-half of the cost calculated under paragraph (3).

**Paying for unreduced retirement lump sum by single payment**

**Q5.**—(1) A man who wishes to pay for an unreduced retirement lump sum by a single payment must elect to do so within 12 months after getting married, or, if he is not then a member, within 12 months of first rejoining the scheme after getting married.

(2) A woman who wishes to pay for an unreduced retirement lump sum by a single payment must elect to do so within 12 months after nominating her husband to receive a dependent widower's pension under regulation G8 (dependent widower's pension).

(3) The amount of a single payment for an unreduced retirement lump sum will be calculated in accordance with Table 2 of Schedule 1.

(4) For the purposes of Table 2 of Schedule 1, "remuneration" means, subject to paragraph (5), the same as in regulation Q4(4) and (5) (meaning of remuneration for the purposes of Table 1 of Schedule 1).

(5) In the case of a member who elects to buy an unreduced retirement lump sum but who is no longer required to contribute under regulation D1 (contributions by members) because regulation D1(3) or (4) applies, "remuneration" means the amount to which a pension equal to the member's final year's pensionable pay and beginning on the day on which regulation D1(3) or (4) started to apply would have been increased under Part I of the Pensions (Increase) Act 1971 at the date of the election to buy the unreduced retirement lump sum.

(6) The member must make any single payment for an unreduced retirement lump sum within 3 months after electing to do so or, if later, within 6 months after starting pensionable employment.

**Paying for additional service or unreduced retirement lump sum by regular additional contributions**

**Q6.**—(1) A member who wishes to pay for additional service or an unreduced retirement lump sum by regular additional contributions must elect to do so before reaching age 63.

(2) Any such regular additional contributions shall be deducted from the member's earnings, and paid to the Secretary of State, in like manner as under regulation D1(5) (contributions by members).

(3) Subject to paragraph (4), the member must pay the regular additional contributions from his next birthday following the date on which he elects to buy the additional service or unreduced retirement lump sum until either his 60th or 65th birthday, whichever the member chooses ("the chosen date").

(4) The period for which a member elects to pay regular additional contributions must be at least 2 years.

(5) The regular additional contributions will be calculated as a percentage of the member's pensionable pay, in accordance with Table 3 of Schedule 1 (if the member is buying additional service) or Table 4 of Schedule 1 (if the member is buying an unreduced retirement lump sum).

(6) The member's total regular contributions to the scheme, including contributions under regulation D1 may not exceed 15 per cent. of pensionable pay, or any other limit specified for the time being by the Inland Revenue.

(7) Where a person elects to buy additional service in the circumstances described in regulation Q1(9), the cost will be calculated as one-half of the cost calculated in accordance with Table 3 of Schedule 1.

(8) If a member who has elected to pay for additional service or unreduced retirement lump sum by regular additional contributions stops paying the contributions before the chosen date under paragraph (3), regulation Q7 (part payment for additional service or unreduced retirement lump sum) will apply.

### **Part payment for additional service or unreduced retirement sum**

**Q7.**—(1) If a member who is paying for additional service or unreduced retirement lump sum by regular additional contributions stops paying before the chosen date under regulation Q6(3), the member's benefits will be calculated as described in this regulation.

(2) If, within 12 months after starting to pay the additional contributions, the member dies in pensionable employment or makes an application for a pension under regulation E2 (early retirement pension on grounds of ill-health) which subsequently becomes payable, an amount equal to the contributions (less any tax that may be payable) will be returned to the member or the member's personal representatives.

(3) If, 12 months or more after starting to pay the additional contributions, the member dies in pensionable employment or becomes entitled to a pension under regulation E2 prior to his attaining the age of 60, the additional contributions shall be deemed to have been paid and the member's benefits will be increased to include the additional service or unreduced retirement lump sum that the member has chosen to buy.

(4) If neither of paragraphs (2) or (3) apply, the member's benefits will include a proportion of the additional service or unreduced retirement lump sum that the member has chosen to buy, calculated as described in paragraph (5).

(5) Subject to paragraph (6) the proportion will be calculated as—

$$\frac{\text{period for which contributions were paid}}{\text{period for which contributions should have been paid}}$$

(6) If the member becomes entitled to receive benefits before the chosen date under regulation Q6(3), the proportion of additional service or unreduced retirement lump sum to be credited to the member will be calculated as described in paragraph (5) but (except in a case where a reduction for early payment falls to be made under regulation E5(2) or E6(7)(b)) will then be reduced on a basis determined by the Government Actuary and consistent with the preservation requirements.

## **PART R**

### *Special provisions for certain members*

#### **Practitioners and trainee practitioners**

**R1.**—(1) These Regulations apply to members who are or have been practitioners as if they were officers employed by the relevant Family Health Services Authority, but with the modifications described in Schedule 2.

(2) These Regulations apply to members who are or have been trainee practitioners as if they were whole-time officers employed by the relevant District Health Authority.

#### **Nurses, physiotherapists, midwives and health visitors**

**R2.**—(1) Subject to paragraph (2), this regulation applies to a member—

(a) who, at the coming into force of these Regulations—

(i) is in pensionable employment as a nurse, physiotherapist, midwife or health visitor,  
or

(ii) has accrued rights to benefits under the scheme arising out of a previous period in which she was engaged in such employment and at no time since the last occasion on which she was so engaged has she had a break in pensionable employment for any one period of 5 years or more,

and

- (b) who spends the whole of the last 5 years of her pensionable employment as a nurse, physiotherapist, midwife or health visitor.

(2) This regulation shall cease to apply if the member has a break in pensionable employment for any one period of 5 years or more ending after the coming into force of these Regulations.

(3) Where this regulation applies—

- (a) regulation E1 (normal retirement pension) will apply to the member as if the reference, in paragraph (1) of that regulation, to age 60, were a reference to age 55;
- (b) if the member leaves pensionable employment because of redundancy, but without becoming entitled to a pension under regulation E3 (early retirement pension on grounds of redundancy), regulation L1 (preserved pension) will apply as if the references, in paragraphs (1), (3) and (4) of that regulation, to age 60, were references to age 55.

(4) Where, in accordance with paragraph (3), a member becomes entitled to receive a pension before age 60, the amount payable shall—

- (a) in the case of a female member, be calculated by reference to all of her pensionable service under the scheme; and
- (b) in the case of a male member, be calculated only by reference to pensionable service on or after 17th May 1990.

(5) Subject to regulation Q6(4), if the member chooses to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q6, contributions may be made from the next birthday following the exercise of the right to do so, until the member's 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q6(3).

(6) For the purposes of paragraphs (1) and (2), pensionable employment includes employment that qualified the member for benefit under a health service scheme.

(7) For the purpose of calculating the 5 year period referred to in paragraph (1)(b), "pensionable employment" does not include additional service bought under regulation Q1 or a period in respect of which a refund of contributions has been paid under regulation L2.

### **Mental health officers**

**R3.**—(1) Subject to paragraph (2), this regulation applies to a member who at the coming into force of these Regulations—

- (a) is in pensionable employment under the scheme as a mental health officer, or
- (b) has accrued rights to benefits under the scheme arising out of a previous period in which he was engaged in such employment and at no time since the last occasion on which he was so engaged has he had a break in pensionable employment for any one period of 5 years or more.

(2) Subject to paragraph (3), this regulation shall cease to apply if the member has a break in pensionable employment for any one period of 5 years or more ending after the coming into force of these Regulations.

(3) Paragraph (2) shall be without prejudice to the operation of paragraph (5)(a) in relation to any period prior to this regulation ceasing to apply.

(4) For the purposes of paragraphs (1) and (2), "pensionable employment" includes employment that qualified the member for benefit under a health service scheme.

(5) Subject to paragraphs (6) and (7), where this regulation applies—

- (a) if the member has in excess of 20 years' pensionable service as a mental health officer, regulation E1 (normal retirement pension) will apply as if the reference, in paragraph (1) of that regulation, to age 60, were a reference to age 55, but only if the member was in pensionable employment as a mental health officer immediately before leaving; and
  - (b) each complete year of pensionable service as a mental health officer in excess of 20 years will count as 2 years' pensionable service.
- (6) For the purposes of calculating the 20 year period referred to in paragraph (5)—
- (a) there shall, in the case of a member who has reached age 50, be taken into account any period before he became a mental health officer in which he was employed on the staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder and in which he devoted the whole or substantially the whole of his time to the treatment and care of such persons, unless it would be more favourable to the member (or, if the member has died, to the persons entitled to benefits in respect of the member) to disregard any such period;
  - (b) pensionable service does not include additional service bought under regulation Q1 (right to buy additional service).
- (7) Paragraph (5) does not apply—
- (a) for the purpose of calculating, under regulations E2 (early retirement pension on grounds of ill-health) and H3, H4 and H5 (child allowance), the pensionable service the member could have completed if he had stayed in pensionable employment until a particular age;
  - (b) for the purpose of calculating a minimum widow's or widower's pension based on the member's pensionable service after 5th April 1978 under regulation G6(2) (member marries after leaving pensionable employment); or
  - (c) for the purpose of calculating a member's benefits where it would be more favourable to the member or other person entitled to the benefits not to apply that paragraph and to calculate the member's benefits by reference to the member's final year's pensionable pay when the member leaves pensionable employment, completes 45 years' pensionable service (calculated without regard to paragraph (5)(b)), reaches age 65 or dies, whichever occurs first.
- (8) Where, by virtue of paragraph (7)(c), paragraph (5) does not apply, the amount of any contributions that should have been paid by the member under regulation D1 (contributions by members), but which were not deducted from the member's earnings, will be deducted from the lump sum payable on the member's retirement or death.
- (9) If a member who has in excess of 20 years pensionable service for the purposes of paragraph (5) leaves NHS employment before reaching age 55 because of redundancy, but without becoming entitled to a pension under regulation E3 (early retirement pension on grounds of redundancy), and was in pensionable employment as a mental health officer immediately before leaving, regulation L1 (preserved pension) will apply as if the references in that regulation, to age 60, were to age 55.
- (10) Subject to paragraph (12), if any member to whom this regulation applies becomes entitled to a preserved pension under regulation L1 on ceasing to be a mental health officer, the pension will be based on the greater of the member's basic service and a period of service calculated as—

$$\frac{\text{basicservice}}{\text{potentialbasicservice}} \times \text{potentialservice}$$

where—

“basic service” means the member's pensionable service, calculated without regard to paragraph (5);

“potential basic service” means the pensionable service the member could have completed if he had stayed in pensionable employment until age 55, calculated without regard to paragraph (5); and

“potential service” means the pensionable service the member could have completed, taking account of paragraph (5), if he had stayed in pensionable employment as a mental health officer until age 55.

(11) Subject to paragraph (12), if a member with at least 2 years' qualifying service ceases to be a mental health officer while continuing in pensionable employment, the member's pension in respect of the period before ceasing to be a mental health officer will, if it would be more favourable to him, be of an amount equal to the preserved pension to which the member would have become entitled in accordance with paragraph (10) if he had left pensionable employment on the day he ceased to be a mental health officer.

(12) Paragraphs (10) and (11) do not apply if the member again becomes a mental health officer within 12 months after the date on which he ceased to be a mental health officer.

(13) Subject to regulation Q6(4), if a member elects to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q6 he may elect to make those contributions from his next birthday following the date on which he elected to buy the additional service or unreduced lump sum until his 55th, 60th or 65th birthday, whichever he chooses, and that date will be the chosen date under regulation Q6(3).

(14) In this regulation, “mental health officer” means—

- (a) an officer working whole-time on the medical or nursing staff of a hospital used wholly or partly for the treatment of persons suffering from mental disorder, who devotes all, or almost all, of his time to the treatment or care of persons suffering from mental disorder;
- (b) any other officer employed in such a hospital who is within a class or description of officers designated by the Secretary of State as mental health officers for this purpose; and
- (c) a consultant, senior hospital medical officer or senior hospital dental officer in part-time NHS employment who devotes all, or almost all, his time to the treatment or care of persons suffering from mental disorder and who satisfies the requirements of paragraph (15).

(15) A member satisfies the requirements of this paragraph if he holds a whole-time specialist post and either—

- (a) he receives at least 10/11ths of the pensionable pay that he would have received for whole-time NHS employment, or
- (b) he was appointed before 1st January 1980 and retains the right, to which he was entitled on 31st December 1979, to be paid at least 9/11ths of the pensionable pay that he would have received for whole-time NHS employment.

(16) The Secretary of State may agree to treat as a mental health officer any member who, by reason of having transferred to part-time pensionable employment, would otherwise have ceased to be a mental health officer providing that person is engaged in work which had it been whole time, would have qualified that member for mental health officer status and there is no break in pensionable employment between the transfer from whole-time to part-time employment.

(17) Where a member is treated as a mental health officer by virtue of paragraph (15) or (16), each year of part-time pensionable service shall, for the purpose of determining whether the member has in excess of 20 years pensionable service for the purposes of paragraph (5) (but for no other purpose), be treated as if it were a year of whole-time pensionable service.



### **Members doing more than one job**

**R4.**—(1) This regulation applies to members in NHS employment with more than one employing authority and members who hold, under one employing authority, two or more separate employments.

(2) The member may contribute to the scheme in respect of all or any of his employments with employing authorities, providing that the employments in respect of which he chooses to contribute to the scheme do not in aggregate exceed, as determined by the Secretary of State, a single comparable whole-time employment.

(3) Any amount by which the member's pensionable pay in respect of concurrent part-time employments exceeds the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment will be ignored.

(4) Any amount by which the member's pensionable service in respect of concurrent part-time employments, calculated as described in regulation R5 (pensionable service in respect of part-time employment), exceeds the period during which the member carried on those employments, will be ignored.

(5) Subject to paragraph (6), the member shall not become entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1 until the termination of all NHS employments (including employment as a practitioner) or he reaches age 70.

(6) If the member leaves employment with one employing authority and becomes entitled to a pension under regulation E3 (early retirement pension on grounds of redundancy) in relation to the employment that has ended, the member may elect to take benefits only in respect of the employment that has ended and to continue to accrue rights to benefits in respect of any other continuing pensionable employment.

(7) Where the member elects under paragraph (6), paragraph (5) will apply in relation to any employment in respect of which the member continues to accrue rights to benefits.

(8) For the purposes of paragraph (5) the member, on leaving NHS employment, shall be treated as having terminated all NHS employment where any remaining NHS employment amounts to 16 hours per week or less.

(9) Regulation S2 (reduction of pension on return to NHS employment) will apply to any member who becomes entitled to a pension under paragraph (6) while continuing in other NHS employment.

(10) In calculating the member's final year's pensionable pay there shall be taken into account pensionable pay in respect of any other pensionable employment in that final year except a pensionable employment in respect of which the member continues to accrue benefits in accordance with paragraph (6).

(11) The member will not receive a refund of contributions under regulation L2 until he leaves all pensionable employment without becoming entitled to a pension under any of regulations E1 to E5 or a preserved pension under regulation L1.

(12) The member may exercise a right to transfer or buy-out under regulations M1 to M5 (transfers and buy-outs) only if he leaves all pensionable employment before reaching age 60 and before becoming entitled to a pension under the scheme.

### **Part-time employment**

**R5.**—(1) Subject to paragraphs (6) and (10), a member's pensionable service in part-time employment will not count at its full length but will be calculated as described in paragraphs (2) or (3), whichever is applicable, as its whole-time equivalent.

(2) If the member's part-time employment is expressed as a specified number of half-days or sessions a week, the whole-time equivalent of the member's pensionable service in respect of

that employment will be calculated by multiplying the full length of that service by the following fraction—

$$\frac{\text{member's pensionable pay}}{\text{comparable whole-time earnings}}$$

(3) In any case where paragraph (2) does not apply, the whole-time equivalent of the member's pensionable service in respect of part-time employment will be calculated by multiplying the full length of that service by the following fraction—

$$\frac{\text{member's hours of employment each week}}{\text{hours constituting comparable whole-time employment}}$$

(4) Subject to paragraph (5), for the purpose of calculating a member's final year's pensionable pay in respect of part-time employment, the member's pensionable pay will be the amount that the Secretary of State determines would have been paid in respect of a single comparable whole-time employment.

(5) Paragraph (4) does not apply to the calculation of final year's pensionable pay for the purposes of—

- (a) regulations F1(2) and F2(2) (lump sum payable on death in pensionable employment or after pension becomes payable);
- (b) regulation S2 (reduction of pension on return to NHS employment).

(6) If a member with pensionable service in part-time employment becomes entitled to a pension under regulation E2 (early retirement pension on grounds of ill health)—

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

(7) If a member in part-time pensionable employment elects to buy additional service as described in regulation Q1 (right to buy additional service), the period of additional service will be calculated in accordance with Table 1 or Table 3 of Schedule 1 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction—

$$\frac{\text{part-time pensionable employment}}{\text{comparable whole-time pensionable employment}}$$

where—

“part-time pensionable employment” means the number of hours, half-days or sessions that the member was required to work under his contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 1 or regular additional contributions were paid in accordance with regulation Q6 (paying by regular additional contributions); and

“comparable whole-time pensionable employment” means the number of hours, half-days or sessions that would have constituted comparable whole-time pensionable employment during that period.

(8) If a member in part-time pensionable employment elects to buy an unreduced retirement lump sum as described in regulation Q2 (right to buy an unreduced retirement lump sum), the period

referred to in Table 2 or Table 4 of Schedule 1 (whichever is applicable) will be reduced in like manner as described in paragraph (7) above.

(9) Paragraphs (7) and (8) above also apply for the purposes of regulation Q7 (part payment for additional service or unreduced retirement lump sum).

(10) A member's pensionable service in respect of part-time employment will count at its full length (and concurrent periods of employment will be treated as a single employment) for the purposes of regulations C2(3) (limit on pensionable service that counts for benefits) and C3(1) (qualifying service).

### **Members entitled to fees for domiciliary consultations**

**R6.**—(1) This regulation applies to members who, as medical or dental officers, have received fees from an employing authority in respect of domiciliary consultations.

(2) Any fees received in respect of domiciliary consultations will be included in the member's pensionable pay for the purposes of regulation D1 (contributions by members).

(3) Any fees in respect of domiciliary consultations that are included in the member's pensionable pay for the purposes of regulation D1 will also be included in the member's pensionable pay for the purpose of deciding the year by reference to which final year's pensionable pay is to be calculated, but the member's final year's pensionable pay will then be reduced by the amount of any fees received in respect of domiciliary consultations during that year.

(4) If the member's final year's pensionable pay is reduced as described in paragraph (3), a supplementary benefit shall be payable with each benefit that is payable to, or in respect of, the member under the scheme.

(5) Subject to paragraph (6), each supplementary benefit that is payable in accordance with paragraph (4) will be calculated in the same way as the benefit that it supplements as if the amount of the fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated were the member's final year's pensionable pay.

(6) Any supplementary benefit will be based on the same pensionable service as the benefit that it supplements, except that—

- (a) any period of additional service bought as described in regulation Q1 (right to buy additional service) will be ignored;
- (b) any additional period of pensionable service credited to the member by virtue of paragraph (5)(b) of regulation R3 (mental health officers) will be ignored;
- (c) any period of service calculated as described in regulation 35(7) of the previous regulations (calculation of service in respect of part-time employment before 15th December 1966) will be ignored; and
- (d) where that pensionable service consists of or includes part-time employment, regulation R5(1) (part-time employment) will be ignored.

(7) If the member exercises a right to buy additional service under regulation Q1 or unreduced retirement lump sum under regulation Q2, the amount of any fees received from an employing authority in respect of domiciliary consultations will not be included in the member's pensionable pay for the purpose of calculating the cost of the additional service or unreduced retirement lump sum, except as described in paragraph (8).

(8) If the member exercises a right to buy an unreduced retirement lump sum under regulation Q2—

- (a) any fees received during the last financial year ending before the member elects to buy an unreduced retirement lump sum will be included in the member's remuneration for

the purpose of calculating the amount payable under regulation Q5(3) (paying for an unreduced retirement lump sum by a single payment); and

- (b) any fees received while the member is paying for an unreduced retirement lump sum by regular additional contributions will be included in the member's pensionable pay for the purposes of regulation Q6(5) (paying for an unreduced retirement lump sum by regular additional contributions).

(9) If the member returns to NHS employment after becoming entitled to a pension, the member's final year's pensionable pay will include, for the purposes of calculating previous pay under regulation S2 (reduction of pension on return to NHS employment), the amount of any fees received in respect of domiciliary consultations during the year by reference to which final year's pensionable pay is calculated.

### **Members who work temporary additional sessions**

**R7.**—(1) This regulation applies to members who work temporary additional sessions.

(2) Any period of employment in respect of a temporary additional session will be ignored when calculating a member's pensionable service, and any payment received in respect of that employment will be ignored when calculating the member's pensionable pay.

(3) In this regulation, "temporary additional session" means a session equivalent to an extra notional half-day which a specialist or an officer appointed to a post in the grade of associate specialist has, in exceptional circumstances, undertaken to work and which does not form part of the member's normal contractual duties.

(4) In the case of a member who holds a whole-time specialist post and who receives at least 10/11ths of the pensionable pay that he would have received for whole-time pensionable employment, temporary additional session also includes any session in excess of 10 in any one week, regardless of its length.

### **Former members of health service schemes**

**R8.**—(1) For the purposes of these Regulations, "health service scheme" means—

- (a) a superannuation scheme provided under regulations made under section 10 of the Superannuation Act 1972 and for the time being in force in relation to Scotland,
- (b) a superannuation scheme provided under regulations for the time being in force under Article 12 of the Superannuation (Northern Ireland) Order 1972 or a scheme made under section 2 of the National Health Service (Isle of Man) Act 1984 (an Act of Tynwald), or
- (c) any other occupational pension scheme approved for this purpose by the Secretary of State.

(2) A member who leaves employment in respect of which he qualified for benefit under a health service scheme and who joins the scheme may, subject to paragraphs (3) and (4), require the Secretary of State to credit him with a period of pensionable service (together with the rights attaching to that service) under the scheme, calculated as if—

- (a) the employment to which the health service scheme applied were NHS employment; and
- (b) the member's contributions to the health service scheme were contributions to the scheme.

(3) The member may exercise this right only if a transfer payment is made from the health service scheme to the scheme.

(4) A member who wishes to exercise this right must do so by making application in writing to the Secretary of State within 1 year after joining the scheme.

(5) A member who leaves employment to which a health service scheme applied without becoming entitled to any benefits other than a return of contributions may buy additional service as

described in regulation Q1 (right to buy additional service) and regulations Q4(7) and Q6(8) will apply, as the case may be, as if the previous service under a health service scheme were previous pensionable service under this scheme.

### **Members whose earnings are reduced**

**R9.**—(1) A member with at least 2 years' qualifying service who suffers a reduction in earnings in the circumstances described in paragraph (2) may opt to take a preserved pension under regulation L1 in respect of his pensionable service before his earnings were reduced.

(2) A member acquires the right described in this regulation if the reduction is due to—

- (a) the member being transferred to other employment with an employing authority;
- (b) the member taking up other employment with an employing authority, in circumstances approved by the Secretary of State; or
- (c) a change in the member's duties, while continuing in the same employment, otherwise than at the member's request or as a result of something done by the member.

(3) The preserved pension will be calculated and paid as described in regulation L1 (preserved pension), as if the member had left pensionable employment immediately before his earnings were reduced.

(4) A member wishing to exercise the option described in this regulation must make application in writing to the Secretary of State within 3 months after his earnings are reduced.

(5) If a member continues to contribute to the scheme after exercising the option described in this regulation, the member's pensionable service before and after the member's earnings are reduced will, subject to paragraph (6), be treated separately unless, when the member becomes entitled to receive a pension, or dies, (whichever occurs first), it would be more favourable to the member to treat the member's pensionable service before and after the reduction, and all such other reductions (if any), as continuous.

(6) The member's pensionable service before and after the member's earnings are reduced—

- (a) will be treated as continuous for the purpose of calculating the member's qualifying service under regulation C3 (meaning of "qualifying service"); and
- (b) if the member next leaves pensionable employment with a pension under regulation E2 (early retirement pension on grounds of ill-health), will be treated as continuous for the purpose of calculating whether, and if so to what extent, the pensionable service on which the pension is based should be increased.

(7) If the member leaves pensionable employment with a pension under regulation E2 and the member's pensionable service falls to be increased as described in paragraphs (4) to (6) of that regulation then, if the member's pensionable service before and after the break is treated separately under paragraph (5), the increase will apply only in respect of benefits attributable to the period after the member's earnings were reduced.

### **Polygamous marriages**

**R10.**—(1) If a member dies without leaving a widow or widower but the member was at the date of death married to a spouse under a law which permits polygamy any benefits that would be payable to the member's widow or widower shall be payable to that spouse, or where there is more than one, to those spouses in equal shares.

(2) The shares will be calculated as at the date the member dies.

(3) A spouse's share of a pension will not be increased on the death of any other spouse.

## PART S

### *Members who return to NHS employment after pension becomes payable*

#### **Suspension of pension on return to NHS employment**

**S1.**—(1) This regulation applies where a pension is payable to a member by virtue of regulation E1 (normal retirement pension), E4 (early retirement pension with employer’s consent) or E5 (early retirement pension with actuarial reduction), or a preserved pension is payable to the member in the circumstances described in L1(4), and, within one month of the pension becoming payable, the member enters NHS employment in which he is engaged for more than 16 hours per week.

(2) A member to whom this regulation applies must inform his employer, and any other person that the Secretary of State may specify, that his pension under the scheme has become payable.

(3) Where this regulation applies the pension referred to in paragraph (1) shall, subject to paragraph (4), cease to be payable.

(4) The pension referred to in paragraph (1) shall again become payable if the member either ceases to be in any NHS employment (or reduces the number of hours worked to 16 or less) for a period of one month or reaches age 70, whichever occurs first.

(5) For the purposes of this regulation “NHS employment” includes—

- (a) employment in respect of which regulations made under section 10 of the Superannuation Act 1972, and having effect in Scotland, apply; employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply and employment to which a scheme made under section 2 of the National Health Service (Isle of Man) Act 1984 (an Act of Tynwald) applies; and
- (b) employment with an employer with whom an agreement has been made under section 18 of the National Health Service (Amendment) Act 1949<sup>(18)</sup> or section 104 of the National Health Service Act 1977<sup>(19)</sup> or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(20)</sup>.

#### **Reduction of pension on return to NHS employment**

**S2.**—(1) This regulation applies, until he reaches age 60, to a member in respect of whom a pension is payable under any of regulations E1 to E5 or L1, who continues in, or subsequently returns to, NHS employment.

(2) A member to whom this regulation applies must inform his employer, and any other person that the Secretary of State may specify, that his pension under the scheme has become payable.

(3) Where this regulation applies, the member’s pension will be reduced to the extent necessary to ensure that the member’s pension plus pay from NHS employment for any financial year after the pension becomes payable does not exceed the member’s previous pay.

(4) A member’s pension will be reduced as described in this regulation whether or not the member is included in the scheme in respect of the employment after his pension becomes payable and regardless of any provision of these Regulations under which a member may be treated as having left NHS employment without actually leaving.

(5) For the purposes of paragraph (3), the amount to be taken as the member’s previous pay shall—

<sup>(18)</sup> 1949 c. 93. Section 118 was repealed by section 129 of and Schedule 16 to the National Health Service Act 1977 c. 49.

<sup>(19)</sup> 1977 c. 49.

<sup>(20)</sup> 1967 c. 28.

- (a) be increased in each financial year by the amount by which a pension beginning on the date on which the member's pension under the scheme became payable (or, if earlier, the member left pensionable employment) would have been increased under Part I of the Pensions (Increase) Act 1971 at the 6th April falling in that financial year;
  - (b) in the case of a person who holds a continuing employment (otherwise than as a practitioner), be increased by the annual rate of pay in respect of the continuing employment; and
  - (c) in the case of a person who is employed as a practitioner in continuing employment, be increased by the average of the annual amounts of uprated earnings in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.
- (6) For the purpose of calculating the reduction to be made under paragraph (3) in respect of any part of a financial year, the amount of the member's "previous pay" will be reduced proportionately.
- (7) This paragraph applies to a person who held a part-time pensionable employment immediately before the pension described in paragraph (1) became payable and who, within the 12 months preceding the date on which the pension became payable, held a concurrent part-time pensionable employment.
- (8) Where paragraph (7) applies and the concurrent part-time pensionable employment terminated before the pension described in paragraph (1) became payable, previous pay shall be increased as described in paragraph (9).
- (9) For the purpose of paragraph (8), previous pay shall be increased by the annual rate of pay in respect of the concurrent part-time employment mentioned in that paragraph or, if higher, that part of the pensionable pay for that employment which falls within the 12 month period mentioned in paragraph (7).
- (10) This paragraph applies to a person who within the 12 months preceding the date on which the pension described in paragraph (1) became payable, was in pensionable employment as a practitioner.
- (11) Where paragraph (10) applies and the pensionable employment as a practitioner terminated before the pension described in paragraph (1) became payable, previous pay shall be increased as described in paragraph (12).
- (12) For the purpose of paragraph (11), previous pay shall be increased by the average of the annual amounts of the member's uprated earnings in respect of the pensionable employment as a practitioner mentioned in that paragraph.
- (13) For the purpose of paragraph (11), "uprated earnings" means the same as in paragraph 11(2) of Schedule 2.
- (14) For the purposes of this regulation—
- "annual rate of pay" means the annual rate of so much of the member's pensionable pay immediately before his pension became payable as consisted of salary, wages or other regular payments of a fixed nature plus so much of his pensionable pay as consisted of fees and other regular payments not of a fixed nature as was payable during the last year before his pension became payable;
  - "continuing employment" means a pensionable employment which a person held immediately before he became entitled to a pension under the scheme and which he continues to hold whether it is pensionable or not;
  - "NHS employment" has the same meaning as in regulation S1(5);
  - "pension" means the amount of pension paid under the scheme for any financial year, plus any increases to that pension payable under Part I of the Pensions (Increase) Act 1971 for that period;

“pay” means the amount of pensionable pay received by the member during that financial year from NHS employment (or what would have been his pensionable pay had he been in pensionable employment); and

“previous” pay means, the greater of—

- (a) final year’s pensionable pay; and
- (b) the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) became payable and which the member held immediately before becoming entitled to that pension.

### **Benefits in respect of pensionable employment after pension becomes payable**

**S3.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension on grounds of ill–health) and who subsequently returns to pensionable employment.

(2) For the purposes of paragraphs (3) and (5), the member’s “previous service” means the pensionable service in respect of which the member became entitled to receive a pension under regulation E2 and the member’s “later service” means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (5), the member’s benefits in respect of later service shall be calculated without regard to the member’s previous service.

(4) Where the member becomes entitled, under regulation E2 to a pension in respect of later service, regulation E2(3) shall not apply in the calculation of that pension.

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

### **Benefits on death in pensionable employment after pension becomes payable**

**S4.**—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension on grounds of ill–health) who—

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

(2) In this regulation, “previous service” and “later service” have the same meaning as in regulation S3(2).

(3) Where this regulation applies, the lump sum payable on the member’s death shall be equal to 5 times the amount of the pension that would have been payable to the member had he left NHS employment and become entitled to a pension, based on his later service, under regulation E1 (normal retirement pension) on the date of his death.

(4) Subject to paragraph (5), if a member to whom this regulation applies leaves a surviving spouse, the spouse’s pension for the first 3 months after the member’s death (6 months if the member leaves a dependent child who is dependent on the spouse) shall be equal to the aggregate of the member’s rate of pensionable pay when he died and the amount of the member’s pension (if any) that was payable at that time.

(5) Paragraph (4) shall not apply if the aggregate of the spouse’s pension and any child allowance which would otherwise be payable under these Regulations is greater.

(6) Except while the pension is payable at the rate mentioned in paragraph (4), any spouse’s pension shall be equal to one–half of the rate of pension mentioned in paragraph (3) that would have been payable to the member and shall be paid in addition to any widow’s (and, where appropriate,



widower's) pension payable under regulation G3 (member dies after pension becomes payable) in respect of the member's previous service.

(7) If a member to whom this regulation applies leaves a dependent child but no surviving spouse, the child allowance, for the first 6 months after the member's death, shall be equal to the aggregate of the member's rate of pensionable pay when he died and the amount of the member's pension (if any) that he was receiving at that time.

(8) Subject to paragraph (9), except where a spouse's pension or a child allowance is payable at the rate mentioned in paragraph (4) or (7) respectively, the child allowance in respect of the member's later service shall be paid as a proportion of the rate of pension mentioned in paragraph (3) that would have been payable to the member and such proportion shall be determined in accordance with the circumstances as described in regulation H3 (member dies in pensionable employment).

(9) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated his previous service and when he died, any child allowance payable under these Regulations shall be calculated according to regulation H4 (member dies after pension becomes payable) in respect of the pension already in payment' and regulation H3 (member dies in pensionable employment) in respect of later pensionable employment. If the aggregate of pensionable service in both calculations is less than 10 years, additional service will be allocated to the later pensionable employment to bring the aggregate up to the shorter of—

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

## PART T

### *General rules about benefits*

#### **Claims for benefits**

**T1.** A person claiming to be entitled to benefits under these Regulations shall make a claim in writing to the Secretary of State and shall provide such evidence of entitlement as the Secretary of State may require.

#### **Deduction of tax**

**T2.** The Secretary of State shall deduct from any payment under the scheme any tax which is required to be paid in respect of it.

#### **Benefits not assignable**

**T3.—**(1) Any assignment of, or charge on, or any agreement to assign or charge, any right to a benefit under the scheme is void.

(2) On the bankruptcy of any person entitled to a benefit under the scheme, no part of the benefit shall be paid to any trustee or other person acting on behalf of the creditors, except as provided for in paragraph (3).

(3) Where, following the bankruptcy of any person entitled to a benefit under the scheme, the court makes an income payments order under section 310 of the Insolvency Act 1986<sup>(21)</sup> that requires the Secretary of State to pay all or part of the benefit to the person's trustee in bankruptcy the Secretary of State shall comply with that order.

---

(21) 1986 c. 45.

**Beneficiary who is incapable**

**T4.**—(1) If the Secretary of State considers that a beneficiary is unable to look after his affairs (by reason of illness, mental disorder, minority or otherwise), she may use any amounts due to the beneficiary for his benefit or may pay them to some other person to do so.

(2) Payment under paragraph (1) to a person other than the beneficiary will discharge the Secretary of State from any obligation in respect of the amount concerned.

**Offset for crime negligence or fraud**

**T5.**—(1) If a loss to public funds occurs as a result of a member's criminal, negligent or fraudulent act or omission, the Secretary of State may reduce any benefits or other amounts payable to, or in respect of, the member (other than guaranteed minimum pensions and benefits arising out of a transfer payment) by an amount equal to the loss.

(2) If the loss to public funds is equal to or greater than the value of the benefits or other amounts payable to or in respect of the member, a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Secretary of State shall give the member a certificate specifying the amount of the loss to public funds and of the reduction in benefits.

(4) If the amount of the loss is disputed, no reduction in benefits will be made until the member's obligation to make good the loss has become enforceable under the order of a court or arbitrator.

(5) Where the loss referred to in paragraph (1) is suffered by an employing authority, the amount of the reduction in benefits will be paid to the employing authority.

**Loss of rights to benefits**

**T6.**—(1) Subject to paragraph (2), the Secretary of State may direct that all or part of any rights to benefits or other amounts payable to or in respect of a member be forfeited if the member is convicted of any of the following offences, committed before the benefit or other amount becomes payable—

- (a) an offence in connection with employment to which the scheme applies which is certified by the Secretary of State either to have been gravely injurious to the State or to be liable to lead to serious loss of confidence in the public service;
- (b) an offence of treason;
- (c) one or more offences under the Official Secrets Acts 1911 to 1989<sup>(22)</sup> for which the member has been sentenced on the same occasion to a term of imprisonment of, or to two or more consecutive terms amounting in the aggregate to, at least 10 years.

(2) A guaranteed minimum pension may be forfeited only if paragraph (b) or (c) applies.

**Commutation of trivial pensions**

**T7.**—(1) Where a person has become entitled to a pension of a trivial amount, the Secretary of State may pay to that person a lump sum representing the capital value of that pension and of any benefits that might otherwise have become payable on that person's death.

(2) Any lump sum payable under this regulation will be calculated by the Secretary of State, after taking advice from the Government Actuary.

(3) A pension may be treated as trivial only if all benefits payable to the person concerned under the scheme are less in value than a pension of £260 a year or any greater amount consistent with the contracting-out and preservation requirements.

(22) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.

(4) A member's pension that includes a guaranteed minimum pension cannot be treated as trivial until the member reaches State pension age.

(5) A payment made under paragraph (1) shall discharge the Secretary of State's liability in respect of that pension and of any benefits that might otherwise have become payable on that person's death.

## PART U

### *Administrative matters*

#### **Extension of time limits**

**U1.** In any particular case, the Secretary of State may extend any time limit mentioned in these Regulations.

#### **Determination of questions**

**U2.** Any question arising under these Regulations as to the rights or liabilities of any person shall be determined by the Secretary of State.

#### **Accounts and actuarial reports**

**U3.—(1)** The Secretary of State shall keep accounts of the scheme in a form approved by the Treasury.

(2) The accounts shall be open to examination by the Comptroller and Auditor General.

(3) The Government Actuary shall prepare an actuarial report of the scheme at the 31st March 1999 and at the expiration of every period of 5 years after that date.

(4) The Government Actuary shall send copies of each actuarial report of the scheme to the Secretary of State and the Treasury.

(5) Employing authorities shall keep records of all contributions deducted from salaries and wages in a manner approved by the Secretary of State and, except where the Secretary of State waives such requirement, provide a statement in respect of such matters to the Secretary of State within 2 calendar months of the end of each financial year.

## PART V

### *Miscellaneous and supplementary*

#### **Option to members detrimentally affected by these Regulations**

**V1.—(1)** This regulation applies in relation to any pension which is payable under these Regulations to or in respect of a person who, having served in an employment or office, service in which qualified persons to participate in the benefits provided under the previous regulations, ceased to serve therein or died before these Regulations came into force.

(2) Where, in a case to which this regulation applies, any provision of these Regulations would operate in relation to any person so as to place that person in a worse position than he would have been if the provision had not applied, that person may elect that the provision shall not so apply by giving notice in accordance with paragraph (3).

(3) A notice given pursuant to paragraph (2) shall be in writing and shall be delivered to the Secretary of State within 6 months of the coming into force of these Regulations.

(4) An election pursuant to paragraph (2) shall have effect in relation to the pension referred to in paragraph (1) only to the extent that such pension has accrued by virtue of contributions made and periods of service rendered prior to the cessation referred to in paragraph (1) (or, if there has been more than one such cessation, the last of them before the coming into force of these Regulations) and in determining entitlement to, and the amount of, the pension to that extent, such person shall be treated as if he had never recommenced pensionable employment at any time after that cessation (or, as the case may be, the last such cessation).

### **Revocations and savings**

**V2.**—(1) The Regulations specified in Column 1 of the Table to Schedule 3 are revoked to the extent specified in Column 2 of that Table.

(2) Anything done under, or by virtue of, any regulation revoked by these Regulations, if it could have been done under or for the purpose of the corresponding provision of these Regulations, shall be deemed to have been done under or by virtue of the corresponding provision of these Regulations and anything begun under, or by virtue of, any such regulation may be continued under these Regulations as if begun under these Regulations.

(3) Where, prior to the coming into force of these Regulations, any of the following provisions of the previous regulations applied in relation to a member, namely—

- (a) regulation 11 (additional benefits for certain transferred officers);
- (b) regulations 30 to 33 (continuation of previous arrangements in respect of additional contributory payments);
- (c) regulation 35(7) (part-time service before 15 December 1966 in respect of certain practitioners);
- (d) regulations 40 to 43 (benefits in the case of certain re-employed pensioners);
- (e) regulations 44 to 51 (optants and certain other arrangements);
- (f) regulations 56 and 57 (modification of benefits and obligations in connection with the National Insurance Acts 1946 and 1965);
- (g) regulations 63 to 65 (officers formerly employed in certain hospitals or in the Blood Transfusion Service);
- (h) regulation 78 (part-time specialists with service before 15th December 1966);
- (i) regulation 79 (continuation of contracts or policies of insurance in certain cases); and
- (j) regulation 83 (provisions relating to contributions on a former higher rate of remuneration);

any rights and liabilities relating to that member by virtue of those provisions shall be deemed to continue to apply notwithstanding the revocation of those provisions.

Signed by authority of the Secretary of State for Health

8th February 1995

*Gerald Malone*  
Minister of State  
Department of Health

We consent to the making of these Regulations

8th February 1995

*Derek Conway*  
*Andrew MacKay*  
Lords Commissioners of Her Majesty's Treasury