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STATUTORY INSTRUMENTS

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**1995 No. 365 (S.15)**

**NATIONAL HEALTH SERVICE, SCOTLAND**

**The National Health Service Superannuation  
Scheme (Scotland) Regulations 1995**

<i>Made</i>	- - - -	<i>16th February 1995</i>
<i>Laid before Parliament</i>		<i>10th March 1995</i>
<i>Coming into force</i>	- -	<i>1st April 1995</i>

The Secretary of State, in exercise of the powers conferred on him by sections 10 and 12 of, and Schedule 3 to, the Superannuation Act 1972<sup>(1)</sup> and of all other powers enabling him in that behalf, after consulting such representatives of persons likely to be affected by these Regulations as appear to him appropriate in accordance with section 10(4) of that Act, and with the consent of the Treasury<sup>(2)</sup>, hereby makes the following Regulations:

**PART A**  
**PRELIMINARY**

**Citation and commencement**

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

(2) These Regulations shall come into force on 1st April 1995.

**Interpretation**

**A2.**—(1) Paragraph (4) of this regulation contains a list of expressions and in these Regulations, unless the context otherwise requires, any expression for which there is an entry in the first column of that paragraph has the meaning given against it in the second column or is to be construed in accordance with directions given against it in that column.

(2) In these Regulations, unless the context otherwise requires—

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- (1) 1972 c. 11. Section 10(1)(a) was amended by the National Health Service (Scotland) Act 1972 (c. 58), Part II of Schedule 7, and sections 10(2A) and (3A) and (6) and 12(4A) were inserted and sections 10(1), 12(2) and (4) amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2), 8(5) and 10.
- (2) See section 10(1) of the Superannuation Act 1972 and Article 2 of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670).

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- (a) any reference to a regulation, Part or Schedule identified by a letter or number or both (an “indicator”) is to be construed as a reference to the regulation, Part or Schedule, as the case may be, identified by that indicator in these Regulations, and any reference in a regulation of or a Schedule to these Regulations to a numbered paragraph is to be construed as a reference to the paragraph bearing that number in that regulation or, as the case may be, that Schedule; and
- (b) any reference to the scheme, except where the context otherwise requires, means the National Health Service Superannuation Scheme for Scotland, the rules of which are set out in these Regulations.

(3) Where these Regulations require anything to be done within a specified period after or from a specified day or event, the period begins immediately after the specified day or, as the case may be, the day on which the specified event occurs.

(4) The following two columns are those referred to in paragraph (1) of this regulation:—

Expression	Meaning
“the 1980 Regulations”	The National Health Service (Superannuation) (Scotland) Regulations 1980 <sup>(3)</sup> ;
“age”	Shall be construed in accordance with section 181(1) of the Pension Schemes Act 1993 <sup>(4)</sup> ;
“buy-out policy”	A policy of insurance or annuity contract that is appropriate for the purposes of section 19 of the Pension Schemes Act 1993 <sup>(5)</sup> (extinguishment of liability of scheme for pensions secured by insurance policies or annuity contracts) and satisfies any requirements of the Inland Revenue;
“cash equivalent”	Shall be construed in accordance with Chapter IV of Part IV of the Pension Schemes Act 1993;
“contracting-out requirements”	The requirements set out in sections 13-24 of the Pension Schemes Act 1993;
“dependent child”	The meaning given by regulation H1;
“employing authority”	(a) (a) a Health Board, Special Health Board or the Common Services Agency for the Scottish Health Service established under section 2 and section 10 of the National Health Service (Scotland) Act 1978 <sup>(6)</sup> ; (b) a National Health Service Trust established under section 12A of the

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<sup>(3)</sup> S.I. 1980/1177 as amended by S.I. 1981/1680, 1983/272, 1988/1956, 1989/807 and 1749, 1990/382 and 1992/3046.

<sup>(4)</sup> 1993 c. 48.

<sup>(5)</sup> See also section 81 of that Act.

<sup>(6)</sup> 1978 c. 29; the definition of “Special Health Board” was inserted into section 2 by section 28 of the National Health Service and Community Care Act 1990 (c. 19), (“the 1990 Act”); section 10 was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 2 and by the 1990 Act, Schedule 10.

Expression	Meaning
	National Health Service (Scotland) Act 1978(7); (c) 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”	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 the member was in pensionable employment for less than 12 months “final year’s pensionable pay” means— $\frac{\text{Pensionable pay}}{\text{Number of days' pensionable employment}} \times 365;$ (b) if pensionable pay was greater in either or both of the two 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 two consecutive years;
“guaranteed minimum pension”	Shall be construed in accordance with section 14 of the Pension Schemes Act 1993;
“health service scheme”	The meaning given by regulation R7(1);
“member”	A person who has been included in the scheme and in respect of whom benefits under the scheme are, or will become payable;
“mental health officer”	The meaning given in regulation R3(16);
“NHS employment”	Employment with an employing authority;
“occupational pension scheme”	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 Taxes Act (retirement benefits scheme) or whose application for approval under that Chapter is under consideration; (b) a statutory scheme as defined in section 612(1) of the Taxes Act (interpretation); or

(7) Section 12A was inserted by the 1990 Act, section 31.

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Expression	Meaning
	(c) a scheme to which section 608 of the Taxes Act applies (superannuation funds approved before 6th April 1980);
“officer”	A person employed by an employing authority;
“ophthalmic medical practitioner”	A medical practitioner providing general ophthalmic services under the National Health Service (Scotland) Act 1978;
“opting-out”	Shall be construed in accordance with regulation B4;
“part-time service”	Service under a contract which provides for regular service of less than whole-time service;
“pay period”	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; in the case of a practitioner, any period of three months ending on the last day of March, June, September or December;
“pensionable employment”	NHS employment in respect of which the member contributes to the scheme;
“pensionable pay”	The meaning given in regulation C1;
“pensionable service”	The meaning given in regulation C2;
“personal pension scheme”	A personal pension scheme within the meaning of Chapter IV of Part XIV of the Taxes Act (personal pension schemes) which is approved by the Inland Revenue for the purposes of that Chapter;
“practitioner”	A medical or dental practitioner on the list of a Health Board or an assistant practitioner but excluding a trainee practitioner or a person who is paid by an employing authority wholly by way of salary, except that an associate general practitioner whose remuneration is paid by an employing authority as agent for the employer shall be a practitioner;
“preservation requirements”	The requirements of Chapter I of Part IV of the Pension Schemes Act 1993 relating to preservation of benefits under occupational pension schemes;
“Public Sector Transfer Arrangements”	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;
“qualifying service”	The meaning given in regulation C3;

Expression	Meaning
“quarter”	A three month period ending on the last day of March, June, September or December;
“relevant daily proportion”	1/365th of the amount that would apply in respect of one year;
“remuneration”	For the purposes of Tables 1 and 2 of Schedule 2 as defined in regulation Q3(4) (paying for additional service by single payment) and Q4(4) (paying for unreduced retirement lump sum by single payment);
“scheme”	Shall be construed in accordance with regulation A2(2)(b);
“self-employed pension arrangements”	A personal pension scheme within the meaning of Chapter IV of Part XIV of the Taxes Act which is approved by the Inland Revenue under that Chapter; but which is neither a personal pension scheme within the meaning of the Pension Schemes Act 1993 nor a contract or a scheme approved under Chapter III of Part XIV of the Taxes Act;
“special class officer”	A mental health officer or a person employed by an employing authority as a nurse, physiotherapist, midwife or health visitor to whom regulations R2 and R3 apply;
“specialist”	The expression means a consultant, senior hospital medical officer or senior hospital dental officer;
“state pension age”	In the case of a man, age 65; in the case of a woman, age 60;
“Taxes Act”	The Income and Corporation Taxes Act 1988(8);
“trainee practitioner”	A person who is being trained in general medical practice as a trainee general practitioner under arrangements made by the Secretary of State;
“transfer values laws”	Chapter IV of Part IV of the Pension Schemes Act 1993;
“whole-time service”	Service under a contract providing for service at standard hours, half-days or sessions for the grade.

## PART B

### MEMBERSHIP OF THE SCHEME

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

**B1.**—(1) Subject to regulation B2 (age limits and restrictions on membership) the following persons are eligible to be included in the scheme:—

- (a) whole-time officers and part-time medical or dental officers;
- (b) medical and dental practitioners, assistant and associate general practitioners and trainee practitioners; and
- (c) any other part-time officer.

(2) A person included in sub-paragraphs (a) and (b) of paragraph (1) above will be included in the scheme automatically, provided he has not made an election under regulation B4 not to be included in the scheme.

(3) A part-time officer included in sub-paragraph (c) of paragraph (1) may elect to be included in the scheme and shall do so by giving notice in writing to the Secretary of State.

(4) Where the election under paragraph (3) is made within the first pay period the election shall take effect from the commencement of employment; otherwise it will take effect from the first day of the pay period immediately after the notice is received or such later date (which must be the first day of a pay period) as may be specified in the notice.

(5) Where there is a reduction in hours from whole-time to part-time without a break in service and the election is made within the first pay period following the reduction in hours the election will take effect from the first day of part-time employment; otherwise an election shall take effect from the first day of the pay period following the election unless a later date (which must be the first day of a pay period) is specified in the notice.

(6) A part-time officer who has been included in the scheme in terms of this regulation who ceases to be employed by an employing authority shall automatically be re-included in the scheme if he has been re-employed by the same employing authority within 12 months (extended as appropriate by any period of maternity or other absence from work to which regulation P1 or P2 applies) provided he has not made an election under regulation B4 not to be included in the scheme.

#### **Age limits and restrictions on membership**

**B2.** The following persons are ineligible to join the scheme:—

- (a) persons under age 16 or over age 70;
- (b) special class officers over age 65;
- (c) officers in “contributory service” under the Teachers’ Superannuation (Scotland) Regulations 1992(9) in any hospital vested in the Secretary of State; and
- (d) persons who hold honorary appointments except that this paragraph shall not apply if the person holding the honorary appointment at the same time holds other employment which entitles him to join the scheme.

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

**B3.**—(1) Members may not continue to contribute to or accrue further rights under the scheme—

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(9) S.I. 1992/280 as amended by S.I.s 1992/1025, 1993/490 and 2513 and 1994/2699.

- (a) in the case of special class officers, on attaining age 65 or on completing 45 years pensionable service and reaching age 60 or over;
- (b) in the case of all other persons, on attaining age 70 or on completing 45 years' pensionable service and reaching age 65 or over;
- (c) after opting out of the scheme in accordance with regulation B4.

(2) Except where regulation E2(11) applies (further pensionable employment under the age of 50 after early retirement pension (ill-health) becomes payable) or regulation E3(3) (concurrent employment where early retirement pension (redundancy etc.) becomes payable) applies, members to whom there became or becomes payable a pension under these Regulations or the 1980 Regulations, may not contribute to or accrue further rights under the scheme.

### **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 the employing authority.

(2) Subject to paragraph (4) unless a later date is specified in the notice, the notice shall take effect from the first day of the pay period immediately following its receipt by the employing authority.

(3) Subject to paragraphs (4) and (5), a member who opts out of the scheme will be treated as having left pensionable employment on the day the notice takes effect.

(4) A member who opts out of the scheme before the end of the first pay period during which the employing authority included the member in the scheme will be treated as never having been included in the scheme.

(5) A notice under this regulation will apply to any subsequent employment with the same employing authority irrespective of the length of the break in service unless and until a further notice is given under paragraph (1) of regulation B5.

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

### **Rejoining the scheme**

**B5.**—(1) Subject to paragraph (2), a member who has opted out of the scheme in terms of regulation B4 may, if in NHS employment, rejoin the scheme by giving notice in writing to the employing authority. The member will be included in the scheme on the first day of the pay period immediately 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.

(2) A member who has opted out of the scheme may not rejoin the scheme during a period of absence from work for any reason.

## **PART C**

### **PENSIONABLE PAY, PENSIONABLE SERVICE AND QUALIFYING SERVICE**

#### **Meaning of “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 payable to a member, in respect of pensionable employment as an officer, but does not include bonuses or payments made to cover expenses or for overtime.

(2) Subject to paragraphs (3) and (4), 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)(a) of the Employment Protection (Consolidation) Act 1978<sup>(10)</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 this regulation, "the permitted maximum" means the same as in section 590C of the Taxes Act (earnings cap)<sup>(11)</sup>.

### **Meaning of "pensionable service"**

**C2.**—(1) In these Regulations, for the purpose of calculating the amount of any benefit payable to or in respect of a member, "pensionable service" means, subject to paragraphs (2) and (3)—

- (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 of contributing service that was so reckonable under the 1980 Regulations;
- (c) any period of contributing service that is reckonable under regulation 3 of the National Health Service (Superannuation) (War Service, etc.) (Scotland) Regulations 1977<sup>(12)</sup> (reckoning war service as contributing service under the principal regulations);
- (d) any period of additional service which the member has purchased under regulation Q1 or under regulations 27 or 28 of the 1980 regulations; and
- (e) any period of pensionable service credited to the member under regulation N1(4) (transfer from other pension arrangements) or as a result of transfer payment to the scheme under the 1980 Regulations or regulation R7(2) (transfer from other health service schemes).

(2) A member's pensionable service does not include—

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<sup>(10)</sup> 1978 c. 44; section 39 was substituted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), Schedule 2.

<sup>(11)</sup> Section 590C was inserted by the Finance Act 1989 (c. 26), Schedule 6, Part I and amended by the Finance Act 1993 (c. 34), section 107.

<sup>(12)</sup> S.I. 1977/2138; amended by S.I. 1981/1018.



- (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;
  - (d) any period of employment where contributions under regulation D1 have ceased;
  - (e) any period in respect of which the Secretary of State has discharged his liability to provide benefits under regulation E9 (refund of contributions), Part M (transfer-out arrangements and buy-outs) and regulation K7 (state scheme premiums).
- (3) Pensionable service in respect of part-time employment will be calculated as described in regulation C4 (pensionable service in respect of part-time employment).
- (4) 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). If the member's service exceeds these limits, the amount of the excess will be ignored.
- (5) Where the member has pensionable service in excess of the limits described in paragraph (3), the Secretary of State shall select those years, by reference to which the benefits are to be calculated, which produce the most favourable result to the member.
- (6) 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 (4), 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.
- (7) 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 (without regard to pensionable service on 29th February in a leap year) will be treated as one year.

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

**C3.—**(1) Where a member's entitlement to benefit is conditional on having a length of “qualifying service” specified in a regulation, “qualifying service” means the aggregate of the following:—

- (a) pensionable service under these Regulations, except for any period of additional service referred to in regulation Q1 (right to buy additional service);
  - (b) where a transfer payment has been accepted under Part N (transfers-in from other pension arrangements) in respect of the member's rights under another occupational pension scheme, a personal pension scheme, a buy-out policy or self-employed pension arrangement, the period of employment that qualified the member for those rights;
  - (c) any period reckonable as “service” under the 1980 Regulations; and
  - (d) any period of part-time pensionable service in accordance with regulation C4(10).
- (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 break between leaving and rejoining 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 (but excluding the break) 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.

(4) If the member is entitled to a preserved pension under regulation E6 in respect of an earlier period of employment (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 L1, the period of employment to which that pension relates will be treated as qualifying service.

(5) If a pension becomes payable to a member under regulation E3 and the member has elected under regulation R4(4) 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 benefits continue to accrue.

### **Pensionable service in respect of part-time employment**

**C4.**—(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 the following fraction:—

$$\frac{\text{Number of half days or sessions}}{\text{comparable whole-time service}} \times 365.$$

(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 pensionable 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 becoming entitled to receive a pension); or
- (b) sub-paragraph (b) of the definition of previous pay in regulation S2(11) (reduction of pension for members who return to pensionable employment after becoming entitled to a pension).

(6) If a member with pensionable service in part-time employment becomes entitled to an ill-health pension under regulation E2 (early retirement pension (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 member's pensionable service in respect 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 2 (whichever is applicable) and then reduced by multiplying the full length of that additional service by the following fraction:—

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

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 2 or regular additional contributions were paid in accordance with regulation Q5 (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 2 (whichever is applicable) will be reduced 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 C3(1) (qualifying service), C2(4) (limit on service that counts for benefits) and R3(5) (extra service credited to long-serving mental health officers), R6(6) (members entitled to fees for domiciliary consultations) and T8 (reduction for benefits under the National Insurance Acts).

## PART D

### CONTRIBUTIONS TO THE SCHEME

#### 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 shall recover any contributions not so deducted 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 and other payments 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 rate as the Secretary of State specifies from time to time.

(2) The Secretary of State shall consult 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) Where, on leaving NHS employment, a pension becomes payable to a member under regulation E3 (early retirement pension (redundancy etc)) or E4 (early retirement pension (employer's consent)) the employing authority must make additional payments to the Secretary of State in respect of—

- (a) the cost of providing the pension under regulations E3 or E4 for the period between the member's leaving NHS employment and reaching age 60 or, in the case of a member who is a special class officer in respect of whom regulation R2 (nurses, physiotherapists, midwives and health visitors) or regulation R3 (mental health officers) applies, the age of 55;
- (b) 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) above for the period referred to in that sub-paragraph;
- (c) the cost of providing compensation under regulations 4(1) (payment of compensation), 6(1) (compensation payable to widow or dependents) or 7 (compensation where death gratuity becomes payable) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981<sup>(13)</sup>;
- (d) the cost of providing any increase under Part I of the Pensions (Increase) Act 1971<sup>(14)</sup> in the rate of the benefits referred to in sub-paragraphs (a) to (c) above but in the case of the benefits referred to in sub-paragraphs (a) and (b) above, only for the periods referred to in those sub-paragraphs; and
- (e) the additional cost attributable to the early payment of the lump sum under regulation E7, 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 be responsible for making additional payments in accordance with this paragraph in respect of all such pensionable service.

(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 payments that are due to the Secretary of State under paragraph (3) shall be made—

- (a) by way of additional payments which shall be paid before the end of the quarter following the quarter in which the benefits in question were provided; 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 or E4 became payable; or

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<sup>(13)</sup> S.I. 1981/1785, as amended by S.I. 1985/2036 and 1992/3046.

<sup>(14)</sup> 1971 c. 56.

(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 or E4 became payable and the others to be paid by 31st October in each of the following 4 financial years.

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

- (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 the Secretary of State's consent is notified 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 the Secretary of State's consent is notified to the employing authority and the others to be paid by 31st October in each of the following 4 years.

(7) Where a pension is in payment under regulation 10(1)(a)(iii) of the 1980 Regulations, an employing authority may, if the Secretary of State agrees, make payment in accordance with paragraph (6)(a) or (b) in respect of payments under paragraph (3)(c) above.

## PART E

### BENEFITS FOR MEMBERS

#### Normal retirement pension

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

(2) 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 receive an immediate 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 (normal retirement pension).

(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, excluding any additional service purchased under regulation Q1 or additional service under regulation R3(5), will be increased as described in whichever of paragraphs (4) to (6) 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 his 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 he considers necessary.
- (10) The amount of the lump sum payable under paragraph (7) will be equal to (a) 5 times the difference between the yearly rate of the member's pension calculated in accordance with this regulation and the annual rate of the member's guaranteed minimum pension or, if lower, (b) twice the member's final year's pensionable pay less the member's lump sum on retirement payable under regulation E7 (which shall not be subject to any reduction under regulation E8); and the amount of the lump sum shall be payable in addition to the retirement lump sum payable under regulation E7 (which shall not be subject to any reduction under regulation E8).
- (11) Where a member to whom a pension is payable under this regulation returns to NHS employment, that employment may be pensionable under the scheme provided that the member is under the age of 50 at the date on which he returns to NHS employment.
- (12) Where further employment becomes pensionable by virtue of paragraph (11), the subsequent period of pensionable employment shall be treated separately from all other pensionable employment for the purposes of calculating the member's benefits.

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

- E3.—**(1) A member whose pensionable employment is terminated shall be entitled to receive an immediate pension if:
- (a) the member has at least 5 years' qualifying service and has reached age 50; and
  - (b) the Secretary of State is satisfied 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).
- (3) A member to whom a pension is payable under this regulation may continue in pensionable employment in relation to other concurrent employment which was pensionable at the date on which the member left the employment in respect of which the pension under this regulation is payable.

### **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)(a) (plus any supplement or increase in that cost under regulation D2(3)(b), (d) or (e)), be entitled to an immediate 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, if a request is made in writing to the Secretary of State, be entitled to payment of an immediate pension.

(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 consulting the Government Actuary, may determine.

(3) Where a pension is payable under paragraph (1), any additional amount payable under these Regulations shall also become payable and 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 the liability to provide a guaranteed minimum pension.

### **Preserved pension**

**E6.**—(1) Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to an immediate 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 E7.

(3) The member will become entitled to receive the pension and retirement lump sum under this regulation before age 60 if—

- (a) the member is in NHS employment and the Secretary of State is satisfied that the member is permanently incapable by reason of physical or mental infirmity of efficiently discharging the duties of that employment;
- (b) the member is not in NHS employment and the Secretary of State is satisfied that the member is suffering from mental or physical infirmity that makes the member permanently incapable of engaging in regular employment; or
- (c) some other benefit becomes payable to the member under regulations E2 to E5 (pensions for members).

(4) If the member is in NHS employment (whether with the same or another employing authority) when he reaches age 60, the pension will not become payable until the member leaves all 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) of this regulation, the Secretary of State may discharge his 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 he considers necessary.

(8) The amount of the lump sum payable under paragraph (5) will be equal to (a) 5 times the difference between yearly rate of the member's pension calculated in accordance with this regulation and the annual rate of the member's guaranteed minimum pension or, if lower, (b) twice the member's final year's pensionable pay less the member's lump sum on retirement payable under this regulation (which shall not be subject to any reduction under regulation E8); and the amount of the lump sum shall be payable in addition to any retirement lump sum under regulation E7 (which shall not be subject to any reduction under regulation E8).

### **Lump sum on retirement**

**E7.**—(1) Each member shall, on becoming entitled to a pension under regulations E1 to E5, also become entitled to a retirement lump sum.

(2) Subject to regulation E8, the lump sum will be equal to 3 times the yearly rate of the pension.

### **Deductions from lump sum**

**E8.**—(1) 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 (2) to (4) is applicable except to the extent that the reduction has been off-set by payments made under regulation Q2 (right to buy an unreduced retirement lump sum).

(2) 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.

(3) If the man's wife died, or the man was divorced from his wife, after 24th 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.

(4) 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.

(5) If a female member has nominated her husband under regulation G8 to receive a dependent widower's pension on her death the lump sum will be reduced in accordance with regulation G8(5).

(6) If a female member has elected before 1st July 1989 to buy an increased widower's pension under regulation G9, the lump sum will be reduced in accordance with regulation G9(2).

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

- (a) the pension referred to in paragraph (2) of regulation E7 means the pension before any reduction is made under regulation E5(2); and
- (b) the lump sum as calculated under paragraph (2) of regulation E7 will be reduced by such amount as the Secretary of State, after consulting the Government Actuary, shall determine.

### **Early leavers' entitlement to refund of contributions**

**E9.**—(1) A member who leaves pensionable employment without becoming entitled to an immediate pension or a preserved pension shall subject to regulation R4(9) 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.



A member who wishes to take a refund of contributions shall make application in writing to the Secretary of State.

(2) 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 his liability to provide a guaranteed minimum pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993<sup>(15)</sup>.

(3) 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 Pension Schemes Act 1993 (deduction of contributions equivalent premium from refund of contributions).

(4) 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 Pension Schemes Act 1993 if the premium had been paid.

(5) Where a member does not apply for a refund of contributions under paragraph (1) the Secretary of State may nonetheless make a refund of those contributions if the member does not return to pensionable employment within 12 months.

(6) A member shall not be entitled to a refund of contributions for any period of pensionable 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 (2).

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

**E10.**—(1) Compound interest will be added to the refund of contributions under regulation E9 except where the employment was terminated by reason of misconduct or inefficiency or at the member's own request.

(2) Subject to paragraph (2), where compound interest is added to a refund of contributions, it will be calculated at the rate of 2 and one-half per cent a 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.

## **PART F**

### **LUMP SUM ON DEATH**

#### **Lump sum when member dies in pensionable employment**

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

(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.

### **Lump sum when member dies after pension becomes payable**

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

(2) Subject to regulation S4 the lump sum 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 E7 (lump sum on retirement).

### **Lump sum where member dies with preserved pension**

**F3.**—(1) If a member leaves pensionable employment with a preserved pension under regulation E6 (preserved pension) and dies before becoming entitled to receive a pension under the scheme, a lump sum will be paid 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 if he had become entitled to it immediately before his death.

### **Lump sum when member dies within 12 months after leaving pensionable employment without immediate 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 E6 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation E9 (refund of contributions) or before a transfer payment is made under regulation M5 (early leaver without preserved pension), a lump sum 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 E6 and as if he had become entitled to receive that pension immediately before his death.

### **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 in accordance with paragraph (2) of this regulation that the widow or widower shall be excluded from entitlement under this regulation.

(2) Notice to the Secretary of State under paragraph (1) must be given in writing and any cancellation of the notice must be in writing.

(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, the lump sum shall be payable to the member's personal representatives.

(4) If the lump sum on death does not exceed the specified amount as defined in paragraph (5), the Secretary of State may pay it to any person or persons claiming to be the member's personal representatives or to be entitled to a share of the lump sum, without requiring proof of the title of the person or persons concerned.

(5) In paragraph (4), the "specified amount" means £5,000 or any higher amount as may be specified in an order made under section 6(1) of the Administration of Estates (Small Payments) Act 1965(16) as the amount to be treated as substituted for references to £500 in section 1 of that Act.

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(16) 1965 c. 32; the amount specified in S.I. 1984/539 is £5,000.

## 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 receive 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 as husband and wife; and
- (b) the widow shall cease to be entitled to the 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 as husband and wife with a man to whom she is not married, if he 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 he 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 a pension becomes payable) will be recalculated (if necessary) as if the child had been born before the member died.

#### **Widow's pension when member dies in pensionable employment**

**G2.**—(1) The widow's pension payable on a member's death in pensionable employment before reaching age 70 will be as described in this regulation.

(2) The widow's pension for the first three months after the member's death (six 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 at least 2 years' 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 retired through ill-health with a pension under regulation E2 (early retirement pension (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 years' 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 his liability to provide this pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

#### **Widow's pension when member dies after pension becomes payable**

**G3.**—(1) Except where regulation G6 applies (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 becomes payable under the scheme will be as described in this regulation.

(2) Subject to paragraph (3), the widow's pension for the first three months after the member's death (six 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).

(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 calculated without regard to any reduction under regulation E5.

#### **Widow's pension when 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 E6 (preserved pension) that had not yet 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 (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.

#### **Widow's pension when member dies within 12 months after leaving pensionable employment without immediate or preserved pension**

**G5.**—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under E1 to E6 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation E9 (refund of contributions) or before a transfer payment is made under regulation M5 (early leaver without preserved pension), the widow shall be entitled to a widow's guaranteed minimum pension unless the Secretary of State discharges his liability to provide this pension by paying a contributions equivalent premium under section 55(2) of the Pension Schemes Act 1993.

#### **Widow's pension when 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 on or after 6th April 1978.

(3) If the member dies after the pension under the scheme became payable, the widow's pension for the first three months after the member's death (six 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) if this regulation had not applied.

### **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 receive 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) Subject to regulation G8 and G9, when calculating a widower's pension, any part of a member's benefit that is based on pensionable service before 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 (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 on or after 6th 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, nominate her husband to receive a dependent widower's pension on her death in respect of any pensionable service before 6th April 1988 for which she did not elect to purchase an increased widower's pension. The member must give such notice to the Secretary of State before leaving pensionable employment or, if earlier, reaching age 70.

(2) The Secretary of State shall accept the member's nomination only if he 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 the 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), and will be based on all of the member's pensionable service; in which case no widower's pension will be payable under regulation G7.

(5) If the Secretary of State accepts 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 E7 (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 the reduction has been off-set by payments made under regulation Q2 (right to buy an unreduced retirement lump sum).

### **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 from 6th April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation 20(2) of the 1980 Regulations<sup>(17)</sup> (widower's pension).

(2) Subject to paragraph (3), any retirement lump sum payable to a member under regulation E7 in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 2/80ths of final year's pensionable pay for each complete year of pensionable service before 25th March 1972, and by 1/80th of final year's pensionable pay for each complete year of pensionable service after 24th March 1972 plus, in each case, the relevant daily proportion of that rate for each additional day.

(3) Where the member elected to buy an unreduced retiring allowance under regulation 29 of the 1980 Regulations, 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 the reduction in benefits described in paragraph (2) of this regulation as if the election had been made under regulation Q2.

## **PART H**

### **DEPENDENT CHILD ALLOWANCE**

#### **Dependent child**

**H1.**—(1) This regulation applies to any child who satisfies the requirements of paragraph (2) and who is—

- (a) a child or grandchild of the member;
- (b) a stepchild of the member by a marriage entered into before the date on which the member leaves pensionable employment or reaches age 70 (whichever occurs first), 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 whom, immediately before the member left pensionable employment, reached age 70 or died (whichever occurs first), 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.

(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, reaches age 70 or dies (whichever occurs first) and who is dependent on the member when the member dies and, if the member dies after leaving pensionable employment, was also dependent on the member when the member left pensionable employment; or

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<sup>(17)</sup> Regulation 20(2) was inserted into the 1980 Regulations by regulation 13 of S.I. 1989/1749.

- (b) born one year or less after the member leaves pensionable employment, reaches age 70 or dies (whichever occurs first), 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) age 17 or over and in full-time education; or
  - (c) age 17 or over and 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) age 17 or over and taking a break in full-time education, or full-time training for a trade, profession or vocation, where the Secretary of State is satisfied that the child intends to return to some such education or training; or
  - (e) under age 19 and not engaged in remunerative full-time work and not entitled to income support in terms of section 124 of the Social Security Contributions and Benefits Act 1992<sup>(18)</sup>.
- (4) A child who is age 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<sup>(19)</sup> at the date in question 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 while qualifying as a dependent child as described in paragraph (3) will be treated as a dependent child for so long as he remains incapable of earning a living.

### **Payment of dependent child’s 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 regulations H3 to H7.
- (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. If there is more than one dependent child, the Secretary of State will divide the allowance between them in such shares as he decides 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.

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<sup>(18)</sup> 1992 c. 4.  
<sup>(19)</sup> 1971 c. 56.

(6) Where a child is a dependent child in relation to 2 or more members, the child allowance shall be payable in respect of the death of not more than 2 of those members and if an allowance would be payable in respect of 2 or more members then the allowance 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.

### **Child allowance when member dies in pensionable employment**

**H3.**—(1) The child allowance payable in the case of a member who dies whilst in pensionable employment and under age 70 will be as described in this regulation.

(2) Subject to paragraph (3) and regulation T8(4), the allowance will be calculated, as described in whichever of paragraphs (4) to (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 (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) and regulation H7 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 the widow or widower until the end of the first six 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 three 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 six 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 under regulation G2 or regulation G2(5) applies the allowance will be paid at the rates described in paragraph (7).

### **Child allowance when 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 apply of paragraphs (3) to (5) or regulation H7, as a proportion of the amount of the member's pension without regard to any actuarial reduction under regulation E5 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), (6) and (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 six months after the member's death will be equal to the member's pension.
- (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 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 six 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 three 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).

### **Child allowance when member dies with preserved pension**

- H5.**—(1) The child allowance payable on the death of a member with a preserved pension under regulation E6 (preserved pension) 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 apply of paragraphs (4) to (6) or regulation H7, 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 apply of paragraphs (4) to (6) or regulation H7, 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 or widower's pension under regulation G4 (member dies with preserved pension) except where regulation G1(2) applies the allowance will be paid at the rate described in paragraph (5).

**Child allowance when member dies within 12 months after leaving pensionable employment without immediate or preserved pension**

**H6.**—(1) This regulation applies if a member leaves pensionable employment without becoming entitled to a pension under any of regulations E1 to E6 and dies within 12 months after leaving.

(2) If the member dies before receiving a refund of contributions under regulation E9 the dependent child shall be entitled to a child's allowance as described in this regulation.

(3) The child allowance will be calculated as described in regulation H5 (member dies with a preserved pension) as if, on leaving pensionable employment, the member had become entitled to a preserved pension calculated as described in regulation E6.

**Increase of child allowance when child not dependent on 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) and at least one dependent child who 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 DEPENDENT**

**Allocation of pension by member for benefit of dependent**

**J1.**—(1) Subject to the following provisions of this Part, 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 dependent.

(2) Any pension provided for a spouse under this regulation shall be payable in addition to any other widow's or widower's pension 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 under the scheme becomes payable; or

(b) at any time after reaching age 60 (55 for special class officers) and completing 40 years' service; or

(c) 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 may be required.

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

### **Limits on allocation**

**J2.**—(1) A member may not allocate more than one-third of his pension to provide a pension on his death for a surviving spouse or a dependent and must keep a pension at least equal to the member's guaranteed minimum pension and, if applicable, the amount specified in paragraph 11 of Schedule 10 to the 1980 Regulations.

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

(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 spouse or dependent 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).

### **Date on which allocation has effect**

**J3.**—(1) An allocation becomes effective once the election to allocate is 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 dependent or spouse dies before the member is told that the Secretary of State accepts the election; or

(c) the member withdraws his application before it is accepted by the Secretary of State.

(3) An allocation may not be withdrawn or cancelled, once the Secretary of State has accepted the member's election to allocate.

### **Death of member after allocation**

**J4.**—(1) 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 becoming entitled to receive a pension the member will be treated, for the purposes of regulation J2, as entitled to the pension he would have received if he had retired immediately before his death.

(2) If a member allocates part of his pension as described in this regulation and then dies after becoming entitled to receive a pension, the amount of pension already paid to the member under the scheme will be treated, for the purpose of calculating the lump sum payable under regulation F2 (member dies after becoming entitled to receive a pension), 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.

## **PART K**

### **CONTRACTING OUT AND GUARANTEED MINIMUM PENSIONS**

#### **Contracting-out requirements to be overriding**

**K1.** The scheme will be administered in conformity with the contracting-out requirements and regulations K2 to K7 will override any inconsistent provisions of these 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<sup>(20)</sup> (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 postponement continues or occurs more than 5 years after State pension age if the member consents; in which case the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement);
- (b) payment may be reduced or suspended under regulation S1 to S3 (members who return to NHS employment after becoming entitled to receive a pension) if the member returns to NHS employment; in which case the member's guaranteed minimum pension will be increased as described in regulation K3 (late retirement); and
- (c) payment may be reduced or suspended where the Secretary of State has made a direction under regulation T6 (loss of rights to benefit) or where he has discharged his liability by making a payment under regulation T7 or under Part M (transfers or buy-outs).

(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 half the member's guaranteed minimum for any period such as is mentioned in section 17(5) of the Pension Schemes Act 1993.

(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 half the part of the member's guaranteed minimum that is attributable to earnings for the tax year 1988-89 and subsequent tax years for any period such as is mentioned in section 17(6) of the Pension Schemes Act 1993.

(5) The part of any guaranteed minimum pension that is attributable to earnings for the tax year 1988-89 and subsequent tax years will increase in 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 a member becomes entitled to a refund of contributions under regulation E9 on leaving pensionable employment or exercises a right to require a transfer or buy-out in accordance with regulation M1 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.

(7) Where paragraph (3) of regulation K7 applies, a guaranteed minimum pension of the amount described in paragraph (4) will be payable.

### **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

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(20) 1993 c. 48.

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>(21)</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 six 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 Pension Schemes Act 1993, or
- (b) a transfer to another occupational pension scheme or to a personal pension scheme, or
- (c) any guaranteed minimum pensions 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 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 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.

(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) (transferred guaranteed minimum pensions).

#### **State scheme premiums**

**K7.**—(1) Subject to paragraph (3) the Secretary of State may discharge his liability to provide guaranteed minimum pensions by paying a state scheme premium under Chapter III of Part III of the Pension Schemes Act 1993.

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(21) 1992 c. 5; section 148 was amended by the Pension Schemes Act 1993, Schedule 8, paragraph 27.

(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.

(3) Notwithstanding paragraph (1) the Secretary of State may not discharge any liability under paragraph (1) when a female member dies with less than 2 years' service.

## PART L

### EARLY LEAVERS RETURNING TO PENSIONABLE EMPLOYMENT

#### Treatment of pensionable service of early leavers returning to pensionable employment

**L1.**—(1) This regulation applies to any member who leaves pensionable employment without becoming entitled to an immediate pension under regulation E1 to E5 (pensions for members) and later returns to pensionable employment before becoming entitled to receive a pension under the scheme.

(2) Subject to paragraph (5), if the member leaves pensionable employment with a preserved pension and then returns to pensionable employment within 12 months after leaving, the member will cease to be entitled to the preserved pension under regulation E6 and the member's pensionable service before and after the break will be treated as continuous.

(3) Where the member leaves NHS employment with a preserved pension and then returns to pensionable employment 12 months or more after leaving—

- (a) the member's pensionable service before and after the break 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 to treat the member's pensionable service before and after the break and all other such breaks (if any) as continuous; in which case it will be treated as continuous; and
- (b) where the member becomes entitled to receive a pension under regulation E2 (early retirement pension (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 is treated as continuous; but where the member's pensionable service before and after the break is treated separately the increase as described in paragraph (4) to (6) of regulation E2 will be the proportion that the service is to the total pensionable service in the scheme calculated as—

$$\text{proportioned increase} = \frac{\text{service after the break}}{\text{total pensionable service}} \times \text{total increase}$$

and the said proportioned increase will be added to the pensionable service after the break.

(4) Subject to regulation L2, 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 will be treated as continuous.

(5) Where paragraph (4) applies and the member has received a refund of contributions in respect of pensionable service before the break, the member's pensionable service before and after the break will be treated as continuous provided that the member returns within 12 months, and, 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 paid.

### **Calculation of benefits**

**L2.**—(1) If the member’s pensionable service before and after the break is treated as continuous, the member’s pensionable employment before and after the break will be treated as continuous for the purpose of calculating the member’s final year’s pensionable pay under regulation A2 for any specified period of pensionable employment.

(2) 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 under regulation A2 in respect of each period.

### **Preserved pension to count as qualifying service**

**L3.** If a member leaves pensionable employment with a preserved pension and, after returning, again leaves pensionable employment without becoming entitled to an immediate pension under regulation E1 to E5 (pensions for members), the member will be entitled to a preserved pension under regulation E6 in respect of the period after the break whether or not he has 2 years’ qualifying service in respect of that period.

### **Continuation of additional contributions**

**L4.** A member whose pensionable service before and after a break is treated as continuous and who, before the break, was paying for additional benefits by regular additional contributions under regulation Q5 (paying for additional service or unreduced retirement lump sum) must continue to pay for those additional benefits after the break.

## **PART M**

### **TRANSFER-OUT ARRANGEMENTS 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, or age 59 where paragraph (3) applies, 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 right referred to in paragraph (1) is a right to require the Secretary of State to use the cash equivalent of the member’s benefits 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, or self-employed pension arrangement that satisfies the requirements of the transfer values laws; 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 the member’s benefits under the scheme to purchase buy-out policies or to acquire rights under a personal pension scheme or self employed pension arrangement only if—

- (a) the member leaves pensionable employment on or after 1st January 1986; and

(b) where the transfer is to a buy-out policy the member has at least 2 years' pensionable service and does not rejoin the scheme until more than one month after leaving pensionable employment; and the member leaves pensionable employment before reaching age 59.

(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, personal pension scheme or self-employed pension arrangement.

(5) Where a member leaves pensionable employment by opting-out and on so doing becomes entitled to a preserved pension under regulation E6 then, if the member has at least 2 years' pensionable 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 benefits that is attributable to pensionable service after 5th April 1988 and the member will acquire a right to the cash equivalent of the remaining benefits only if he actually leaves NHS employment before reaching age 60.

(6) Subject to paragraph (7) and to paragraph (2) of regulation M5 a member loses the right referred to in paragraph (1) if any pension or other benefit becomes payable to the member before the member reaches age 60.

(7) This regulation applies to a member who leaves NHS employment with an immediate pension under regulation E3 (early retirement pension (redundancy etc.)) 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 and the member will be treated as if the benefits represented by that amount had never been payable to the member.

(8) 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 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 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, personal pension scheme or self-employed pension arrangement 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 may exercise the right at any time before reaching age 59.

(4) A member who leaves pensionable employment less than six months before his 59th birthday may exercise the right under paragraph (3) at any time up to six months after leaving.

(5) Subject to paragraph (6), a member may withdraw the application 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) to (6), 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<sup>(22)</sup>, calculated and verified as required by Chapter IV of Part IV of the Pension Schemes Act 1993<sup>(23)</sup> (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 or self-employed pension arrangement which is not an appropriate scheme within the meaning of that Chapter of that Part of that Act, 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 his liability to provide guaranteed minimum pensions in respect of the member and the Secretary of State may discharge that liability by payment of a state scheme premium under regulation K7.

(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.

(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>(24)</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 Part N (transfers-in from other pension arrangements), plus the amount of the member's contributions to the scheme.

(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 pensionable service before 12th December 1988 will be calculated as described in the 1980 Regulations as applicable immediately before that date, if that 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 prior to the last date he is required to make a transfer payment under these Regulations the Secretary of State has directed, under regulation T6 (loss of rights to benefit), that any part of a member's benefits under these Regulations shall be forfeited, the cash equivalent payable in respect of that member shall be withheld or reduced to the extent of 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 (member's right to transfer or buy-out) within 12 months after receiving the member's application or by age 60 if that is earlier.

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(22) 1971 c. 56.

(23) 1993 c. 48.

(24) 1838 c. 10 ( 1&2.Vict.). Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c. 59), Schedule, Part I; the rate of interest was amended by S.I. 1971/491, 1977/141, 1979/1382, 1980/672, 1982/696 and 1427 and 1985/437.

(2) Where regulation M2(3) applies, if the member leaves pensionable employment within six months before reaching age 59 and the Secretary of State receives the member's application after the member reaches age 59 but within six 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 within 6 months or by the date on which the member reaches age 60 if that is earlier.

(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 three 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 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 E6 (pensions for members).

(2) This regulation applies to a member who has received a refund of contributions under regulation E9 (refund of contributions) only if, before exercising the right to transfer, the member pays to the Secretary of State an amount equal to that refund of contributions (including any interest).

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

- (a) sub-paragraph (2)(a) of regulation M1 will not apply; 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 or self-employed pension arrangement, 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.

(4) A member who pays an amount to the Secretary of State as described in paragraph (2) of this regulation will be treated, for the purposes of regulation M1(6), as if 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 consulting 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 payments**

**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-IN 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, a self-employed pension arrangement 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 Taxes Act (freestanding 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 not less than 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:—

Member's age	Appropriate factor
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 the member joins the scheme, or requests the Secretary of State to accept the transfer payment, after reaching age 60.

(4) If the Secretary of State accepts the transfer payment, the member will be credited with an additional period of service under the scheme in respect of the transfer payment, 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 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 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 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 this 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) With the consent of each member and after consulting the Government Actuary, the Secretary of State may accept a single transfer payment from another occupational pension scheme, in respect of two or more members.

(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**

### **ABSENCE FROM WORK**

#### **Maternity absence**

**P1.**—(1) A period of absence for pregnancy or confinement will count as pensionable service for so long as the member contributes to the scheme.

(2) If the earnings used to calculate a member's pensionable pay are reduced during a period of absence for pregnancy or confinement, then for the purpose of calculating the member's contributions to the scheme, pensionable pay for the period of absence will be calculated on the basis of the member's reduced earnings and if the member's earnings are subsequently suspended the member's contributions will be calculated on the basis of the member's reduced earnings immediately before the commencement of unpaid absence.

(3) If a member is not entitled to paid maternity leave under her terms of employment or under statute, for the purpose of calculating the member's contributions to the scheme, pensionable pay for

the period of absence will be calculated on the basis of the member's pensionable pay immediately before the absence started.

(4) For all purposes (including employer contributions) other than calculating the member's contributions to the scheme, a member's pensionable pay for the period of absence for pregnancy or confinement will be calculated as if no reduction were being made.

#### **Absence because of illness or injury**

**P2.**—(1) This regulation applies to members who are absent from work because of illness or injury.

(2) If the earnings used to calculate a member's pensionable pay are reduced during a period of absence for illness or injury—

- (a) for the purpose of calculating the member's contributions to the scheme, 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.

(3) Except for the purpose of regulation Q3(4) (in which event no account will be taken of the suspension), if a member's earnings are suspended during a period of absence for illness or injury, the member will be treated as if he had left pensionable employment, except that the member will not be entitled to any benefits or refund of contributions until the member actually leaves pensionable employment.

(4) If, on account of illness or injury, a member leaves pensionable employment or, by virtue of paragraph (3), is treated as if he had left pensionable employment, without becoming entitled to a preserved pension, then if the member later returns to pensionable employment, regulation L1(4) (early leavers returning to pensionable employment) will apply as if the reference to "12 months" was a reference to "3 years".

(5) The benefits payable on the death of a member whose earnings are suspended during a period of absence from work for illness or injury will be calculated as if the member had died in pensionable employment on the day before his earnings were suspended, unless the member has exercised the right to require a transfer or buy-out in accordance with regulation M1 (member's right to require a transfer or buy-out).

#### **Absence for reasons other than illness or injury**

**P3.**—(1) This regulation applies to members who are absent from work for reasons other than illness or injury.

(2) If the earnings used to calculate a member's pensionable pay are reduced or suspended during a period of leave of absence for reasons other than illness or injury, "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.

(3) A member who is absent from work without leave and whose earnings are suspended will be treated as if he had left pensionable employment, except that the member shall not be entitled to any benefits or a refund of contributions until the member returns to or actually leaves pensionable employment.

## PART Q

### RIGHT TO BUY ADDITIONAL SERVICE AND UNREDUCED LUMP SUM

#### Right to buy additional service

**Q1.**—(1) Provided a member will be able to complete at least 9 years' pensionable service prior to reaching age 60 and subject to the provisions of this regulation and regulations Q3 (paying by single payment) and Q5 (paying by regular additional contributions) a member in pensionable employment may increase his rights to benefits by buying additional pensionable service in accordance with the regulations in this Part.

(2) The member may choose to pay for additional service by making a single payment in accordance with regulation Q3 or by making regular additional contributions in accordance with regulation Q5 or partly in one way and partly in the other.

(3) A member must exercise his right to buy additional service within the time limits described in regulation Q3 or, as the case may be, regulation Q5 and before becoming entitled to receive a pension under regulation E1 (normal retirement pension) or E6 (preserved pension).

(4) Any period of additional service that a member buys will count as pensionable service for all 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 (illhealth)); and
- (b) for the purpose of calculating the member's qualifying service in accordance with regulation C3 (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 that exercise of her right will be treated as service before 6th April 1988.

(6) Subject to paragraph (7) and regulation C2(4), the maximum period of additional service that a 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 ("potential years of service") if he stayed in pensionable employment until age 60. A member who will not be able to complete at least 9 years' pensionable service prior to reaching age 60 may not buy any additional service:—

Potential years of service	Maximum period of additional service that member may buy
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

Potential years of service	Maximum period of additional service that member may buy
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 pensionable 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 Q4 (paying by single payment) and Q5 (paying by regular additional contributions) a member in pensionable employment whose service started before 25th March 1972 and who is, or has been, married may make payments to the scheme to off-set all or part of any reduction in the lump sum payable to the member under regulation E7 (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 Q4 or by making regular additional contributions in accordance with regulation Q5 or partly in one way and partly in the other.

(3) A member must exercise the right to buy an unreduced retirement lump sum within the time limits described in regulation Q4, or as the case may be, regulation Q5 and before the lump sum becomes payable.

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

**Q3.**—(1) 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 only if—

- (a) he again becomes a member having become entitled, in respect of earlier pensionable service, to a pension under regulation E6 (preserved pension) which has not become payable; or
- (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 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 2.

(4) For the purposes of Table 1 of Schedule 2, "remuneration" means, subject to paragraph (5), the yearly average of a member's pensionable pay in respect of the three 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 three 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 three months’ pensionable employment.

(6) The member must make any single payment for additional service within three months after electing to do so or, if later, within six 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**

**Q4.**—(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 2.

(4) For the purposes of Table 2 of Schedule 2, “remuneration” means, subject to paragraph (5), the same as in regulation Q3(4) and (5) (meaning of “remuneration” for the purposes of Table 1 of Schedule 2).

(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 Pension (Increases) Act 1971(25) at the date on which the member elects to buy an unreduced retirement lump sum.

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

### **Paying by regular additional contributions**

**Q5.**—(1) A member who wishes to pay for additional service or unreduced retirement lump sum by regular additional contributions must elect to do so before reaching age 63.

(2) 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 start paying the regular additional contributions from the member’s next birthday following the date on which the member 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 2, (if the member is buying additional service) or Table 4 of Schedule 2 (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) 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) will apply.

(8) Where a member elects to make payment for additional service in the circumstances described in regulation Q1(9), the cost will be calculated as one-half of the cost calculated under paragraph (5).

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

**Q6.**—(1) A member electing to buy additional service or unreduced retirement lump sum shall do so by giving notice in writing to the Secretary of State 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 benefits during a period of absence from work without leave or because of ill-health or injury, or while his earnings are reduced or suspended.

(3) For the purposes of these Regulations, the date on which a member elects to buy additional service or unreduced lump sum means the date on which the Secretary of State 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 three months after starting that employment, the election will cease to have effect.

(5) For the purposes of paragraph (4), and notwithstanding regulation P2(3) (temporary absence through illness or injury), a member whose earnings are suspended during a period of absence from work for illness or injury will not be treated as if he had left pensionable employment.

(6) A member who wishes to pay for additional service or unreduced retirement lump sum by regular additional contributions must be able to sign a declaration, in the form provided, that he knows of no reason why his health should prevent him from paying the additional contributions for the whole period for which he has chosen to pay them.

(7) Where payment in accordance with regulation Q5(5) is causing, or continuation would cause, financial hardship the Secretary of State may consent to the discontinuance of the payments and regulation Q7 will apply.

### **Part payment for additional service or unreduced retirement lump 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 Q5(3), the member's benefits will be calculated as described in this regulation.

(2) If the member dies or becomes entitled to a pension under regulation E2 (early retirement pension (ill health)) within 12 months after starting to pay the additional contributions, 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 but before reaching the age of 60 the member dies in pensionable employment or becomes entitled to a pension under regulation E2 the member will be treated as if the contributions 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. If a member who retires through ill health later returns to pensionable employment before the chosen date under regulation Q5(3), he must continue paying the additional contributions until the chosen date.

(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 whichever of paragraphs (5) and (6) applies.

(5) If the member becomes entitled to receive benefits at or after the chosen date under regulation Q5(3) the proportion will be calculated as—

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

(6) If the member other than a member to whom paragraph (3) applies dies or becomes entitled to receive benefits before the chosen date under regulation Q5(3), the benefits will be calculated as described in paragraph (5) but, except in a case where benefits are reduced under E5(2) or E8(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

#### Medical and dental 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 Health Board, but with the modifications described in Schedule 1 to these Regulations.

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

#### 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 the member was engaged in such employment and at no time since the last occasion on which the member was so engaged has 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 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 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 references, in paragraph (1) of that regulation, to age 60 were a reference to age 55;

- (b) if the member leaves NHS employment because of redundancy but without becoming entitled to an immediate pension under regulation E3 (early retirement pension (redundancy etc.)), regulation E6 (preserved pension) will apply as if the references in 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 paragraph (6), if the member chooses to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q5, 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 Q5(3).
- (6) The period for which a member chooses to pay regular additional contributions under regulation Q5 must be at least 2 years.
- (7) For the purposes of paragraph (1), “pensionable employment” includes employment that qualified the member for benefit under a health service scheme from which a transfer payment has been made to the scheme.
- (8) For the purposes of paragraph (1) and (2), a person shall not be treated as having ceased to be in pensionable employment during any period in respect of which he is a member of a health service scheme.
- (9) 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 E9.

### **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 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), a person shall not be treated as having had a break in pensionable employment during any period in respect of which he is a member of a health service scheme.
- (5) Subject to paragraphs (6) to (8), where this regulation applies—
- (a) each complete year of the member's pensionable service as a mental health officer in excess of 20 years will count as 2 years' pensionable service; and

- (b) where there is 20 years or more of such pensionable service the member shall be entitled to a pension under regulation E1 (normal retirement pension) on leaving NHS employment at any time after reaching age 55 but only if the member was in pensionable employment as a mental health officer immediately before leaving.

(6) For the purposes of calculating the 20 year period referred to in paragraph (5) the pensionable service as a mental health officer will be based on either—

- (a) a total of 20 years' pensionable service as a mental health officer (including any period that counted towards the 20 year period referred to in regulation 8(1) of the 1980 Regulations) unless it would be more favourable to the member (or, if the member has died, to the person entitled to benefits in respect of the member) to disregard this paragraph; or
- (b) in the case of a member who has reached age 50, 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 person entitled to benefits in respect of the member) to disregard this paragraph;

and pensionable service does not include additional service bought under regulation Q1 (right to buy additional service) or service credited under regulations N2 or N3 (transfers from other pension arrangements).

(7) If both sub-paragraphs (6)(a) and (6)(b) apply to a member the member's pensionable service will be calculated so as to produce the more favourable result to the member or, if the member has died, to the person entitled to benefits in respect of the member.

(8) Paragraph (5) does not apply—

- (a) for the purpose of calculating, under regulations E2 (early retirement pension (ill health)) and H3(3)(b), H4(2)(b) and H5(3)(b) (child allowances), the pensionable service the member could have completed if he stayed in NHS 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 on or after 6th April 1978 under regulation G6(2) (member marries after leaving pensionable employment) or from 6th April 1988 under regulation G7(3) (widower's pension);
- (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 final year's pensionable pay when the member leaves pensionable employment, completes 45 years' pensionable service (calculated without regard to paragraph (5)(a)), reaches age 65 or dies, whichever occurs first.

(9) Where, by virtue of paragraph (8)(c), paragraph (5) does not apply to a member's benefits because it is more favourable to the member or other person entitled to the benefits not to apply that paragraph, the amount of any contributions that should have been paid 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.

(10) If a member to whom paragraph (5) applies leaves NHS employment before reaching age 55 because of redundancy but without becoming entitled to an immediate pension under regulation E3 (early retirement pension (redundancy etc.)), and was in pensionable service as a mental health officer immediately before leaving, regulation E6 (preserved pension) will apply as if the references to age 60 were to age 55.

(11) Subject to paragraph (13), if any member to whom this regulation applies becomes entitled to a preserved pension under regulation E6 on ceasing to be a mental health officer, the pension will be based on the greater of the member's basic pensionable service and a period of service calculated as—

$$\frac{\text{basic service}}{\text{potential basic service}} \times \text{potential service}$$

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.

(12) Subject to paragraph (13), 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 be equal to the preserved pension to which the member would have become entitled in accordance with paragraph (11) if he had left pensionable employment on the day he ceased to be a mental health officer, if this would be more favourable to the member.

(13) Paragraphs (11) and (12) 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.

(14) Subject to paragraph (15), if a member elects to pay for additional service or unreduced retirement lump sum by regular additional contributions under regulation Q5 he may elect to make those contributions from his next birthday following the date on which he elected to buy the additional service or reduced lump sum until the member’s 55th, 60th or 65th birthday, whichever the member chooses, and that date will be the chosen date under regulation Q5(3).

(15) The period for which a member elects to pay regular additional contributions under regulation Q5 must be at least 2 years.

(16) 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 people suffering from mental disorder, who devotes all, or almost all, of his time to the treatment or care of people 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, in part-time NHS employment who devotes all, or almost all, his time to the treatment or care of people suffering from mental disorder and who satisfies the requirements of paragraph (17).

(17) 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.

(18) The Secretary of State may agree to treat as a mental health officer any person who would otherwise, on transferring to part-time pensionable employment, cease to be a mental health officer providing that member 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.

(19) Where a member is treated as a mental health officer under paragraph (18) each year of part-time pensionable service shall, for the purpose of determining whether the member has in excess of 20 years' 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 employment with more than one employing authority and members who hold, under one employing authority, two or more separate employments.

(2) A member may contribute to the scheme in respect of all or any of his employments with employing authorities, subject to an aggregated maximum of 365 days' whole-time equivalent pensionable employment; except that a member who is contributing to the scheme in respect of whole-time NHS employment cannot contribute to the scheme in respect of concurrent employment with the same or another employing authority.

(3) Subject to paragraphs (4) and (6), a member shall not become entitled to a pension under any of regulations E1 to E5 until the termination of all NHS employments (including employment as a practitioner) or until the member reaches age 70.

(4) If a member leaves employment with an employing authority and becomes entitled to a pension under regulation E3 (early retirement pension (redundancy etc.) in relation to the employment that has ended, the member may, instead of taking benefits in respect of all NHS employment, elect to take benefits only in respect of the employment that has ended and to continue to accrue benefits in respect of the other continuing pensionable employments.

(5) Where a member elects under paragraph (4), paragraph (3) will apply in relation to any employment in respect of which the member continues to accrue benefits.

(6) For the purposes of paragraph (3) a 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.

(7) Regulation S2 (members who return to NHS employment after pension becomes payable) will apply to any member who becomes entitled to a pension under paragraph (4) while continuing to accrue benefits in respect of other NHS employment.

(8) 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 (4).

(9) A member will not receive a refund of contributions under regulation E9 (refund of contributions) until he leaves all pensionable employment without becoming entitled to a pension or a preserved pension under any of regulations E1 to E6.

(10) A member may only exercise a right to transfer or buy-out under Part M (transfers and buy-outs) if he leaves all NHS employment before reaching age 60 in the case of a transfer and age 59 for a buy-out policy and before becoming entitled to receive a pension under the scheme.

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

(12) Any amount by which a member's pensionable service in respect of concurrent part-time employments, calculated as described in regulation C4(2) and (3) (service in respect of part-time

employment), exceeds the period during which the member carried on those employments will be ignored.

### **Transferred officers (supplementary payments)**

**R5.**—(1) This regulation applies to members who were transferred from local authority employment under the National Health Service (Scotland) Act 1972(26).

(2) When the member leaves NHS employment, becomes entitled to receive a pension or dies (whichever occurs first), the following benefits will be added to the benefits otherwise payable to, or in respect of, the member under the scheme:—

- (a) a yearly amount equal to any additional superannuation benefits that would have been granted by the local authority had the member stayed in its employment until the date he left NHS employment, became entitled to receive a pension or died (as the case may be), and
- (b) any payments other than superannuation benefits that the local authority would have made if the circumstances in which the member left NHS employment, became entitled to receive a pension or died (as the case may be) had occurred immediately before the date on which he was transferred to NHS employment.

(3) Where a member dies after becoming entitled to receive a pension, the amount of any benefits paid to the member under paragraph (2)(b) will be ignored when calculating the amount of any lump sum payable on the member's death under regulation F2 (member dies after becoming entitled to receive a pension).

### **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 service credited to the member by virtue of paragraph (5)(a) of regulation R3 (mental health officers) will be ignored;

- (c) any period of pensionable service in respect of part-time employment will count at its full length and will not be reduced to its whole-time equivalent as described in regulations C4(2) and C4(3) (pensionable service in respect of part-time employment);
- (d) the member's pensionable service will include any period of additional service credited to the member under regulation 5(2) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981<sup>(27)</sup> (crediting of additional period of service); and
- (e) any period of pensionable service calculated as described in regulation 37(7) of the 1980 Regulations (calculation of pensionable service in respect of part-time employment before 15 December 1966) will be ignored.

(7) Except as described in paragraph (8), 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 sums.

(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 to end 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 Q4(3) (paying for an unreduced retirement lump sum by 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 Q5(5) (paying by regular additional contributions).

(9) If the member returns to NHS employment after becoming entitled to receive 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 where member returns to NHS employment after becoming entitled to receive pension), 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.

(10) For the purposes of paragraph (9), "NHS employment" means the same as in regulation S1(5).

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

**R7.**—(1) For the purposes of these Regulations, "health service scheme" means—

- (a) a superannuation scheme provided under the regulations made under section 10 of the Superannuation Act 1972<sup>(28)</sup> and for the time being in force in relation to England and Wales, or
- (b) a superannuation scheme provided under regulations for the time being in force under Article 12 of the Superannuation (Northern Ireland) Order 1972<sup>(29)</sup> or section 54 of the National Health Service (Isle of Man) Act 1948 (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 the member qualified for benefit under a health service scheme and who joins the scheme may, subject to paragraphs (3) and (4), require

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<sup>(27)</sup> S.I. 1981/1785, as amended by S.I. 1985/2036 and 1992/3046.

<sup>(28)</sup> 1972 c. 11; section 10(1)(a) was amended by the National Health Service (Scotland) Act 1972 (c. 58), Schedule 7, Part II and sections 10(2A) and (3A) and (6) were inserted and section 10(1) amended, by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), sections 4(2) and 8(5).

<sup>(29)</sup> S.I. 1972/1073 (N.I.10).



the Secretary of State to credit him with a period of 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 refund of contributions may buy additional service as described in regulation Q1 (right to buy additional service). Regulation Q3(7) and regulation Q5(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**

**R8.**—(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 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 choosing to transfer to 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 E6 (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 (qualifying service); and
- (b) if the member next leaves NHS employment with an immediate pension under regulation E2 (early retirement pension (ill health)), will be treated as continuous for the purpose of calculating whether, and if so to what extent, the service on which the pensionable pension is based should be increased.

(7) If the member leaves pensionable employment with an immediate pension under regulation E2 and the member's pensionable service falls to be increased as described in paragraphs (4) to (6) of that regulation, the increase will apply only in respect of benefits attributable to the period after the member's earnings were reduced.

- (8) If a member dies in pensionable employment after exercising the option described in this regulation, the benefits that become payable on the member's death will be equal to the greater of—
- (a) the benefits that would be payable in the case of death in pensionable employment, in which case the member's exercise of the option will be disregarded; and
  - (b) the benefits that would have been payable if the member had left pensionable employment immediately before the member's death.

### **Polygamous marriages**

**R9.**—(1) If a member dies and at the date of death the member was married to a spouse or spouses under a law which permits polygamy, any benefits payable to a widow or widower will be payable in equal shares to the member's widow or widower, if any, and any other spouse or spouses.

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

(3) Where the death of one or more spouse occurs the pension will be paid in full to the surviving spouse or divided between the surviving spouses in equal shares.

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

**R10.**—(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 consultant, senior hospital medical officer or senior hospital dental officer 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 consultant 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.

### **Officers on the staff of special hospitals**

**R11.**—(1) This regulation applies to persons employed on the staff of a state hospital provided by the Secretary of State under Part VIII of the Mental Health (Scotland) Act 1984<sup>(30)</sup>.

(2) For the purposes of these Regulations, the Secretary of State or the State Hospital Management Committee where a State Hospital Management Committee has been established under section 91(2) of that Act, is regarded as an employing authority in relation to officers to whom this regulation applies and the scheme established under section 1 of the Superannuation Act 1972<sup>(31)</sup> shall not apply.

### **Part-time specialists with service before 15th December 1966**

**R12.**—(1) Subject to paragraph (2), this regulation applies where it would result in the payment of greater benefits than would otherwise be the case to and in respect of members who—

- (a) are in whole-time pensionable employment immediately before benefits become payable to or in respect of them under the scheme; and

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<sup>(30)</sup> 1984 c. 36.

<sup>(31)</sup> Section 1 was amended by the Pensions (Miscellaneous Provisions) Act 1990 (c. 7), section 8 and by the Pension Schemes Act 1993 (c. 48), Schedule 8, paragraph 6.

- (b) have previous pensionable service as specialists in respect of part-time employment before 15th December 1966, where that part-time employment occupied substantially the whole of the member's time.
- (2) This regulation applies, subject to paragraph (3), only for the purpose of calculating benefits for pensionable service in respect of—
  - (a) any period of whole-time employment;
  - (b) any period of part-time employment as a specialist before 1st January 1980, if the part-time employment occupied substantially the whole of the member's time; and
  - (c) any period of employment as a maximum part-time consultant during which the member satisfies the requirements of paragraph (4).
- (3) This regulation does not apply to pensionable service in respect of any period of employment as a practitioner.
- (4) A member satisfies the requirements of paragraph (2) if he holds a whole-time consultant post and either—
  - (a) he receives at least 10/11ths of the pensionable pay that he would have received for whole-time pensionable 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 pensionable employment.
- (5) If it would be more favourable to the member or other person entitled to the benefits—
  - (a) benefits for the pensionable service mentioned in paragraph (2) will be based on the full length of that pensionable service rather than (in the case of pensionable service in respect of part-time employment) the whole-time equivalent of that pensionable service;
  - (b) if the full length of the pensionable service mentioned in paragraph (2) is not a whole number of years, any additional period of more than 182 days will be treated as half a year and any additional period of 182 days or less will be ignored; and
  - (c) the benefits in respect of that pensionable service will be calculated by reference to the yearly average of the member's pensionable pay during the last 3 years of pensionable employment, instead of by reference to the member's final year's pensionable pay.

## PART 5

### MEMBERS WHO RETURN TO PENSIONABLE EMPLOYMENT AFTER PENSION BECOMES PAYABLE

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

**S1.**—(1) This regulation applies where a pension becomes payable to a member by virtue of regulation E1 (normal retirement pension), E4 (early retirement pension (employer's consent)) or E5 (early retirement pension (with actuarial reduction)) and, within one month of the date on which the pension becomes 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 hours 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 employment with a National Health Service employing authority in England and Wales in respect of which regulations made under section 10 of the Superannuation Act 1972 apply and employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 and section 54 of the National Health Service (Isle of Man) Act 1948 (an Act of Tynwald) apply.

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

**S2.**—(1) This regulation applies, until he reaches age 60, to any member who continues in or returns to NHS employment after his pension becomes payable under any of regulations E2 to E5 (early retirement pensions).

(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) Subject to paragraph (5), 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) A member’s employment with an employer with whom an agreement has been made under section 89 of the National Health Service (Scotland) Act 1978<sup>(32)</sup> or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(33)</sup> will not be treated as NHS employment, and the employer will not be treated as an employing authority, for the purposes of this regulation unless the member is included in the scheme in respect of that employment.

(6) For the purposes of paragraph (3), the amount to be taken as previous pay shall—

- (a) be increased in each financial year by the amount by which a pension beginning on the date on which the member’s benefits under the scheme became payable (or, if earlier, the date 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 adding to it the amount of the annual rate of pay in respect of the continuing employment;
- (c) in the case of a person who is employed as a practitioner in continuing employment, be increased by adding to it the amount of the average of the annual amounts of uprated earnings as defined in paragraph 11 of Schedule 1 in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.

(7) 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.

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<sup>(32)</sup> 1978 c. 29; section 89 replaced section 18 of the National Health Service (Amendment) Act 1949 (c. 93).

<sup>(33)</sup> 1967 c. 28; section 7 was amended by the Superannuation Act 1972, section 10(5), Schedule 6, paragraph 66 and Schedule 8; by the National Health Reorganisation Act 1973 (c. 32), Schedule 5 and by the National Health Service (Scotland) Act 1978 (c. 29), Schedule 16, paragraph 24.

(8) This paragraph applies to a person who held a part-time pensionable employment before the pension described in paragraph (1) became payable and who at any time during the period of that employment held a concurrent part-time pensionable employment.

(9) Where paragraph (8) 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 (10).

(10) For the purpose of paragraph (9), previous pay shall be increased by the amount of the member's pensionable pay or annual rate of pay (calculated as described in paragraph (11)) whichever is the greater, that relates to the member's last year of concurrent pensionable employment increased in accordance with paragraph (6)(a).

(11) For the purposes of this regulation—

“annual rate of pay” means that 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, for the purposes of paragraph (1), a pensionable employment which a person held immediately before he became entitled to the said pension 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, subject to paragraphs (6) to (8), 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) becomes payable and which the member held before becoming entitled to that pension.

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

**S3.**—(1) This regulation applies to any member in respect of whom a pension becomes payable under regulation E2 (early retirement pension (ill-health)) and who subsequently enters 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 the member 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, the increase as described in regulation E2(3) shall be in accordance with the proportioned increase described in regulation L1(3)(b).

(5) For the purposes of regulations D1(3) and D1(4) (contributions by members) and regulation C2(4) (meaning of “pensionable service”) 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 (ill health)) who—

- (a) returns to pensionable employment after that pension under regulation E2 becomes payable; and
- (b) dies in pensionable employment.

(2) In this regulation, the member’s “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. For this purpose, no account will be taken of the member’s previous service.

(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 total 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 than the spouse’s pension payable under that paragraph.

(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 described in paragraph (3) that would have been payable to the member.

(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) If a member to whom this regulation applies leaves a dependent child not dependent on the surviving spouse the child allowance for the first 3 months will be the aggregate of the member’s pensionable pay when he died plus the aggregate of the member’s pension (if any).

(9) Subject to paragraph (10), except where a spouse’s pension or a child allowance is payable at the rate mentioned in paragraph (4), (7) or (8) respectively, the child allowance shall be paid as a proportion of the rate of pension described in paragraph (3). That proportion shall be determined in accordance with the circumstances as described in regulation H3 (member dies in pensionable employment).

(10) If a member to whom this regulation applies dies 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 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 be entitled to deduct from any payment under the scheme any tax for which he may be liable in respect of it.

#### Benefits not assignable

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

(2) On the bankruptcy or sequestration 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 or sequestration of any person entitled to a benefit under the scheme, the court makes an income payments order under section 32(2) and (4) of the Bankruptcy (Scotland) Act 1985<sup>(34)</sup> or under section 310 of the Insolvency Act 1986<sup>(35)</sup> (income payments orders) 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.

#### 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), he 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, fraud or negligence

**T5.**—(1) If he is satisfied that a loss to public funds has occurred as a result of a member's criminal, fraudulent or negligent 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 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.

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<sup>(34)</sup> 1985 c. 66.

<sup>(35)</sup> 1986 c. 45.

(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 arbiter.

(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 benefit 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 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>(36)</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 (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 consulting the Government Actuary.

(3) A pension may be treated as trivial only if all benefits payable in respect of the person concerned under the scheme and any freestanding AVC schemes as defined in section 591(2)(h) of the Taxes Act relating to the same employment are less in value than a pension of £260 a year or such higher amount prescribed by the contracting-out and preservation requirements.

(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.

### **Reduction in benefits to take account of benefits under the National Insurance Acts**

**T8.**—(1) This regulation applies to members—

- (a) who had ceased to be in pensionable employment before the coming into force of these Regulations unless after that date they return to pensionable employment; or
- (b) who became entitled to receive a pension under the 1980 Regulations and who, before the coming into force of these Regulations, returned to pensionable employment, in which case the pension under the 1980 Regulations will be subject to this regulation unless their

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(36) 1911 c. 28; 1920 c. 75; 1939 c. 121; 1989 c. 6.



benefits fall to be calculated by reference to combined pensionable service before and after the coming into force of these Regulations.

(2) Where this regulation applies, pensions payable under the scheme to women who have reached age 60 and men who have reached age 65 will be reduced in accordance with paragraph (3) to take account of benefits payable under the National Insurance Act 1946<sup>(37)</sup> and the National Insurance Act 1965<sup>(38)</sup>.

(3) The reduction referred to in paragraph (2) will be £1.70 for each year of pensionable service after 4th July 1948 and before 1st April 1980, or such lesser reduction as would have applied under regulation 56 of the previous Regulations.

(4) Benefits for members who paid contributions under section 1(1)(b) of the National Insurance Act 1959<sup>(39)</sup>, section 4 of the National Insurance Act 1965<sup>(40)</sup> or the corresponding provisions of the National Insurance Act (Northern Ireland) 1959<sup>(41)</sup> or the National Insurance (Isle of Man) Act 1961 (an Act of Tynwald) will be reduced to take account of benefits payable under those Acts (provided that no such reduction shall be of a greater amount than that which would have applied under Schedule 10 of the 1980 Regulations).

(5) Any amount by which a member's pension is reduced under this regulation will be ignored for the purposes of calculating—

- (a) the member's retirement lump sum, and
- (b) the lump sum, any widow or widower's pension and any child allowance, payable on the member's death in pensionable employment or, subject to paragraph (6), after becoming entitled to receive a pension.

(6) For the purpose of calculating any higher rate spouse's pension or child allowance that becomes payable on a member's death after becoming entitled to receive a pension, if the member dies after reaching age 60 (if a woman) or 65 (if a man), the references to the member's pension in regulations G3(2) and H4(2)(b) and (7) (member dies after pension becomes payable) are to the member's pension as reduced by virtue of this regulation.

## 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.** The Secretary of State will determine any question concerning any person's rights or liabilities under these Regulations and his decision shall be final.

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(37) 1946 c. 67; this Act was repealed by the Social Security Act 1973 (c. 38), Schedule 28 but a savings provision is necessary to cover benefits already paid under the 1946 Act.

(38) 1965 c. 51.

(39) 1959 c. 47; this Act was repealed by S.L.R. 1965 but a savings provision is necessary to cover benefits already paid under the 1946 Act.

(40) 1965 c. 51; section 4 was amended by the National Insurance Act 1966 (c. 6), section 1, by the National Insurance Act 1969 (c. 44), section 1, and by the National Insurance Act 1971 (c. 50), section 1.

(41) 1959 c. 21 (N.I.).

### **Accounts and actuarial reports**

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

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

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

(4) The Government Actuary will 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 pensionable pay in such manner as is 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**

#### **Options to persons 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 1980 Regulations, has ceased to serve therein or died before these Regulations come 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 in 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, savings and transitional provisions**

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

(2) Without prejudice to section 16 of the Interpretation Act 1978(**42**), where, prior to the coming into force of these Regulations, any of the following provisions of the 1980 Regulations applied in relation to a member, namely—

- (a) regulation 13 (continuation of previous arrangements in respect of additional benefits for certain transferred officers);

- (b) regulation 32 to 35 (continuation of previous arrangements in respect of additional contributory payments);
- (c) regulation 37(7) (part-time service before 15th December 1966 in respect of certain practitioners);
- (d) regulations 43 to 45 (benefits in the case of certain re-employed pensioners);
- (e) regulations 46 to 53 (optants and certain other arrangements);
- (f) regulation 63 (officers formerly employed in certain hospitals);
- (g) regulation 78 (continuation of contracts or policies of insurance in certain cases);
- (h) regulation 79 (provisions relating to a special class of practitioner); and
- (i) regulation 83 (provisions relating to contributions on a former higher rate of remuneration);

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

(3) Anything done under or by virtue of any regulation revoked by these Regulations if it could have been done under or for the purposes 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.

St. Andrew's House,  
Edinburgh  
15th February 1995

*Fraser of Carmyllie*  
Minister of State, Scottish Office

We consent

16th February 1995

*T J R Wood*  
*A J B Mitchell*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

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## SCHEDULE 1

Regulation R1

### MEDICAL AND DENTAL PRACTITIONERS

#### PART I

#### DEFINITIONS AND MODIFICATIONS

##### **Additional definitions used in this Schedule**

**1. In this Schedule—**

“assistant practitioner” means a medical or dental practitioner, who is employed by a principal practitioner, and in that employment is wholly or mainly engaged in assisting his employer in the discharge of the employer’s duties as a practitioner, and for whose employment the consent of the Health Board is required;

“associate general practitioner” means a medical practitioner who is employed by a principal practitioner to provide general medical services in circumstances where the principal practitioner is entitled to claim an allowance under regulation 31(1)(q) of the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations 1974(43) (payments to doctors);

“officer service” means, subject to paragraph 9 (officer service treated as practitioner service), service as an officer;

“pensionable earnings” has the meaning given in paragraphs 3 to 8;

“practitioner income” has the meaning given in paragraph 3(2);

“practitioner service” means, subject to paragraph 9 (officer service treated as practitioner service), pensionable service as a medical, dental or ophthalmic medical practitioner;

“principal practitioner” means a medical or dental practitioner on the list of a Health Board;

“uprated earnings” is to be construed in accordance with paragraph 11(2).

##### **Application of Regulations with modifications**

2.—(1) These Regulations subject to the modifications described in this Schedule apply to members who are or have been practitioners as if they were officers employed by the relevant Health Board and, except where the context otherwise requires, references to an employing authority shall, in relation to a practitioner, be taken as a reference to the relevant Health Board.

(2) Notwithstanding any other provision of these Regulations, a practitioner who wishes to contribute to the scheme must do so in respect of all of his work as a practitioner.

(3) A practitioner who has given notice under regulation B4 to opt out of the scheme in respect of practitioner service may nonetheless be a member in respect of any service as an officer.

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(43) S.I. 1974/506 as amended by S.I. 1974/508, 1975/696, 1976/733, 1574, 1978/1762, 1981/56, 965, 1982/1279, 1985/296, 534, 804, 1625, 1713, 1986/303, 925, 1507 and 2310, 1987/385, 386 and 1382, 1988/1073 and 1454, 1989/1883 and 1990, 1990/2509, 1991/572, 883 and 2241, 1992/191, 2401 and 2933, 1993/521 and 1994/884.

## PART II

### PENSIONABLE EARNINGS

#### **Meaning of “pensionable earnings”**

**3.—(1)** In the case of a practitioner other than an assistant practitioner, “pensionable earnings” means practitioner income less—

- (a) any sum on account of practice expenses that may be appropriate in accordance with a formula laid down by the Secretary of State for the purpose; and
- (b) the pensionable earnings, to the extent allowed by the Secretary of State, of any assistant practitioner in the practitioner’s employment or in the case of an assistant practitioner who is not in pensionable employment under the scheme, the amount that would have been taken to be his pensionable earnings if he were in such pensionable employment.

**(2)** Subject to sub-paragraph (3), for the purposes of this paragraph, “practitioner income” means—

- (a) all payments made by an employing authority to a principal practitioner in respect of general medical services, general dental services, general ophthalmic services or pharmaceutical services provided by the practitioner, including any payments so made to the practitioner as a trainer in general practice;
- (b) any charges made to a patient in respect of the services mentioned in paragraph (a) above which the practitioner is authorised by or under any enactment to retain, other than charges authorised by regulations made under section 73(b) of the National Health Service (Scotland) Act 1978<sup>(44)</sup> (charges for more expensive supplies of dental appliances), and
- (c) any sums paid to the practitioner out of a fund determined by reference to the number of beds in a hospital.

**(3)** If the practitioner is in concurrent employment as an officer, or with a local authority or university, or as a civil servant, or in any other employment that the Secretary of State may in any particular case allow, “practitioner income” does not include any amounts for which the practitioner is required to account to the employer as a term or condition of that employment.

#### **Calculating “pensionable earnings” of practitioners in partnership**

**4.—(1)** In the case of practitioners practising in partnership, the pensionable earnings of each principal practitioner shall be calculated by aggregating the pensionable earnings of each principal practitioner (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them not included in the scheme) and subject to paragraph (2) dividing the total equally by the number of such partners.

**(2)** Where the principal practitioners do not share equally in the partnership profits, they may elect that each practitioner’s pensionable earnings shall be a fraction of the partnership’s total pensionable earnings corresponding to the practitioner’s share of the partnership’s profits.

**(3)** In the case of medical practitioners, if any principal practitioner in the partnership receives earnings in respect of employment as an officer, the practitioners may elect that each practitioner’s pensionable earnings be a fraction of the partnership’s aggregate pensionable earnings calculated so far as is reasonably practicable, so as to produce the result that each practitioner’s aggregate pensionable earnings is a fraction of the total aggregate pensionable earnings of all the practitioners in the partnership corresponding to the practitioner’s share in the partnership’s total profits.

**(4)** For the purposes of paragraph 4(3)—

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<sup>(44)</sup> 1978 c. 29; section 73(b) was amended by the Health and Social Security Act 1984 (c. 48), Schedule 8.

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“the partnership’s aggregate pensionable earnings” and “total pensionable earnings” do not include any amounts that are stated in the notice given under paragraph 5 to form part of one principal practitioner’s pensionable earnings or pensionable pay, but not to form part of the partnership profits;

“total aggregate earnings” means all pensionable earnings paid to members of the partnership in respect of employment as a practitioner plus any pensionable pay in respect of employment as an officer.

“total pensionable earnings” means all pensionable earnings paid to members of the partnership in respect of service as a practitioner.

(5) The calculation described in paragraph 4(3) will be made by the Health Board to which the practitioners are required to give notice of their election in accordance with paragraph 5.

**5.—(1)** Practitioners must exercise the election described in paragraph 4 by giving notice in writing.

(2) Dental practitioners must give such notice to the Health Board by which they wish the necessary action to be taken.

(3) In the case of medical practitioners, if all the practitioners in the partnership are on the list of a single Health Board, they must give notice to that Board. Otherwise they must give notice to the Board that is responsible, under the National Health Service (General Medical and Pharmaceutical Services) (Scotland) Regulations 1974, for assembling information about the total number of persons on the list of the practitioner or practitioners concerned.

(4) The notice must be signed by all the principal practitioners in the partnership and must state as a fraction each practitioner’s share in the partnership profits. In the case of medical practitioners, the notice must state the name of every Health Board on whose list the name of any practitioner in the partnership is included.

(5) If medical practitioners wish account to be taken of remuneration received in respect of concurrent employment as officers, the notice must state, in respect of every practitioner in the partnership who is so employed, the name of the employing authority and the pensionable pay received in respect of that employment. The notice must also include an undertaking by the practitioners to give notice in writing to the Health Board concerned at the end of each quarter, stating the pensionable pay received, in that quarter, in respect of employment as an officer by each practitioner in the partnership who is so employed.

(6) Any notice given under this paragraph will take effect from the date agreed between the practitioners and the Health Board concerned. If no agreement is reached, the date will be decided by the Secretary of State.

(7) Any notice given under this paragraph may be cancelled or amended by a subsequent notice in writing signed by all practitioners in the partnership. A notice will continue in effect until cancelled, or (if earlier) there is a change in the partnership.

(8) Where a practitioner has opted out of the scheme under regulation B4 the pensionable earnings calculated as in paragraph 4 above shall not be treated as pensionable earnings for the purpose of providing any benefits under these Regulations.

(9) Where medical practitioners gave notice under proviso (b)(iii) of regulation 61(2) of the National Health Service (Superannuation) (Scotland) Regulations 1961(45) that they wished that paragraph of the proviso to apply in their case, then so long as the notice remains effective they shall be treated for the purposes of paragraph 4 above as if they were not in partnership.

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(45) S.I. 1961/1398 as variously amended.

### **Meaning of “pensionable earnings” in relation to other practitioners**

6.—(1) In the case of an assistant practitioner or an associate general practitioner, “pensionable earnings” means, subject to sub-paragraph (2), all salary, wages, fees and other regular payments paid to the practitioner plus the money value of the use of any apartments.

(2) “Pensionable earnings” as described in sub-paragraph (1) do not include payments for overtime or any allowances paid to cover the cost of providing office or laboratory accommodation or clerical or other assistance, or any travelling or subsistence allowance or other payments to be spent, or to cover expenses incurred, for the purposes of the practitioner’s employment and do not include any of the payments referred to in sub-paragraph (1) unless approved for that purpose by the Secretary of State.

### **Exclusions and deductions from pensionable earnings—all practitioners**

7. Any sum that is withheld or otherwise recovered from a practitioner under the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992(46) shall be excluded or deducted from the practitioner’s pensionable earnings in such manner and to such extent as the Secretary of State may approve.

### **Limit on pensionable earnings—dental practitioners**

8.—(1) A dental practitioner’s pensionable earnings in any financial year ending before 1st April 1995 are subject to the upper limit specified in the following table for the period in which the year falls:—

Period	Upper limit for each year
1st April 1950 to 31st March 1966	£3,500
1st April 1966 to 31st March 1972	£6,000
1st April 1972 to 31st March 1975	£10,000
1st April 1975 to 31st March 1978	£15,000
1st April 1978 to 31st March 1982	£21,000
1st April 1982 to 31st March 1985	£33,000
1st April 1985 to 31st March 1988	£40,000
1st April 1988 to 31st March 1989	£45,000
1st April 1989 to 31st March 1990	£54,000
1st April 1990 to 31st March 1991	£58,000
1st April 1991 to 31st March 1992	£65,000
1st April 1992 to 31st March 1993	£72,000
1st April 1993 to 31st March 1994	£73,000
1st April 1994 to 31st March 1995	£75,000

(2) A dental practitioner’s pensionable earnings in any financial year starting after 31st March 1995 are subject to the upper limit specified for that year by the Secretary of State.

(46) [S.I. 1992/434](#).

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(3) In the case of a dental practitioner employed by persons carrying on a deceased practitioner's dentistry business, pensionable earnings cannot exceed the total of the amount paid to him by those persons, plus any amounts paid to him by a Health Board that those persons allow him to retain.

### PART III

#### OFFICER SERVICE TREATED AS PRACTITIONER SERVICE

##### Officer service treated as practitioner service

9.—(1) Subject to sub-paragraph (3), if a member does not have more than 10 years' officer service on first becoming a principal practitioner, the member's officer service before first becoming a principal practitioner will be treated as practitioner service.

(2) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (1), the member's pensionable pay in respect of that officer service will be disregarded and the member's uprated earnings will be increased by the same proportion as the member's practitioner service is increased by virtue of its being treated as practitioner service under sub-paragraph (1).

(3) Sub-paragraph (1) does not apply where—

- (a) the member first became a principal practitioner before 31st March 1977 and the benefits calculated under the corresponding provision as it applied immediately before that date would have been greater; or
- (b) the member's pension in respect of total officer service would otherwise be greater than the member's pension in respect of total practitioner service (where "pension" includes, in each case, any increases payable under Part I of the Pensions (Increase) Act 1971)<sup>(47)</sup> and the member's total pension would be reduced if the member's officer service before first becoming a principal practitioner were treated as practitioner service.

(4) The calculation described in sub-paragraph (3)(b) will be made when the member's pension under the scheme becomes payable. If the member dies before his pension becomes payable the calculation will be made at the date of his death and by reference to the pension which would have become payable under regulation E1 (normal retirement pension) or E6 (preserved pension) if he had left pensionable employment immediately before that date.

(5) When calculating the member's total officer service and total practitioner service for the purposes of sub-paragraph (3)(b), any increase in the member's pensionable service by virtue of regulation E2 (early retirement pension (ill-health)), and any additional service bought as described in regulation Q1 (right to buy additional service), will be ignored.

(6) Subject to sub-paragraph (8), if a member has, in total, less than one year's officer service on the last occasion when the member ceases to be a practitioner before his pension under the scheme becomes payable, that officer service will be treated as practitioner service.

(7) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (6), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(8) If the member has been a principal practitioner, sub-paragraph (1) will be applied before sub-paragraph (6) and—

- (a) sub-paragraph (6) will not apply to any officer service that is treated as practitioner service under sub-paragraph (1); and

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(47) 1971 c. 56.



(b) any officer service that is treated as practitioner service under sub-paragraph (1) will be ignored for the purpose of deciding whether sub-paragraph (6) applies.

(9) If any member with practitioner service works in employment as an officer for less than 1 year after last ceasing to be a practitioner, any officer service that is attributable to that employment will be treated as practitioner service.

(10) For the purposes of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (9), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(11) Where the officer service mentioned in paragraph (6) or paragraph (9) has been credited as a result of a transfer under regulation N1 (member's right to transfer accrued rights to benefits to the scheme), the pensionable pay in respect of it shall be deemed to be the pensionable pay by reference to which the additional period of service was calculated under regulation N2(3) or N3(2), whichever is applicable.

## PART IV

### CONTRIBUTIONS TO THE SCHEME

#### **Contributions to the scheme**

**10.**—(1) In the case of members who are practitioners, regulation D1 (contributions by members) is modified as described in sub-paragraphs (2) to (5).

(2) The contribution rate for practitioners is 6 per cent of pensionable earnings.

(3) Contributions must be paid until the member reaches age 70 or completes 45 years' pensionable service and reaches age 65.

(4) Principal practitioners must pay their contributions to the appropriate employing authority.

(5) Contributions payable by an assistant practitioner or associate general practitioner will be deducted from the practitioner's earnings, and paid to the appropriate employing authority by the employing principal practitioner or deducted by the employing authority if acting as agent for the principal practitioner.

(6) Regulation D2 (contributions by employing authorities) is modified so that contributions in respect of practitioners are payable under that regulation by the appropriate employing authority.

## PART V

### BENEFITS FOR MEMBERS

#### **Pensions for members—normal retirement pension**

**11.**—(1) In the case of members who are or have been practitioners, regulation E1 (normal retirement pension) is modified so that the yearly rate of a member's pension—

(a) in respect of officer service, will be equal to 1/80th of final year's pensionable pay for each complete year of service, plus the relevant daily proportion for each additional day (as described in that regulation); and

(b) in respect of practitioner service will be equal to 1.4 per cent of the member's uprated earnings.

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(2) The member's uprated earnings are to be calculated by uprating the member's pensionable earnings in the manner determined by the Secretary of State after consulting such professional organisations as he considers appropriate.

#### **Early retirement pension—ill health**

**12.—(1)** In the case of members who are or have been practitioners, regulation E2 (early retirement pension (ill health)) is modified so that, if the member satisfies the requirements for a pension based on pensionable service that is increased under any of paragraphs (4) to (6) of that regulation—

- (a) the member's total pensionable service will be increased as described in whichever of those paragraphs applies;
- (b) the length of the member's officer service and practitioner service will each be increased by the proportion by which the member's total pensionable service is increased; and
- (c) for the purpose of calculating the member's pension in respect of practitioner service, the member's uprated earnings will then be increased by the same proportion as the member's practitioner service is increased by under paragraph (b) above.

(2) For the purposes of sub-paragraph (1), "total pensionable service" includes both officer service and practitioner service but does not include any period of additional service that the member buys under regulation Q1 (right to buy additional service).

#### **Early retirement pensions/employer's consent**

**13.** A practitioner may not become entitled to a pension under regulation E4 (early retirement pension (employer's consent)) as a result of the termination of pensionable employment as a practitioner.

#### **Lump sum on member's death in pensionable employment or after pension becomes payable**

**14.—(1)** In the case of members who die in pensionable employment as practitioners, regulation F1 (lump sum when member dies in pensionable employment) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F1(2) is treated as a reference to the yearly average of the member's uprated earnings at the date of death.

(2) In the case of members who die after a pension under the scheme in respect of practitioner service becomes payable, regulation F2 (lump sum payable on member's death after pension becomes payable) is modified so that, in relation to the member's employment as a practitioner, the reference to final year's pensionable pay in regulation F2(2) is treated as a reference to the yearly average of the member's uprated earnings at the date of death.

## **PART VI**

### **BENEFITS FOR DEPENDENTS**

#### **Widow or widower's pension on member's death in pensionable employment**

**15.** In the case of members who die in pensionable employment as practitioners, regulation G2 (widow's pension on member's death in pensionable employment) is modified so that the reference, in regulation G2(2), to the rate of the member's pensionable pay when he died is treated, in relation to the member's employment as a practitioner, as a reference to the average rate of the member's pensionable earnings during the last complete quarter before the member died.

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

16. In the case of female members who elected to buy increased widower's pension under regulation G9 (increased widower's pension) that regulation is modified so that the lump sum payable on the member's retirement will be reduced in respect of each year of practitioner service that the member buys, by 2.8 per cent of uprated earnings for each complete year before 25th March 1972, and by 1.4 per cent of uprated earnings for each complete year after 24th March 1972 and before 6th April 1988, plus, in each case, the relevant daily proportion for each additional day.

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

17. In the case of members who die in pensionable employment as practitioners, regulation H3 (child allowance on member's death in pensionable employment) is modified so that the references, in regulation H3(6) and H3(7), to the rate of the member's pensionable pay when he died are treated, in relation to the member's employment as a practitioner, as references to the average rate of the member's pensionable earnings during the last complete quarter before the member died.

## **PART VII**

### **ABSENCE FROM WORK**

#### **Members away from work and maternity absence**

18.—(1) In the case of members who are practitioners, regulations P2 (absence because of illness or injury) and P3 (absence for reasons other than illness or injury) are modified so that the references to pensionable pay in regulations P3(2) and P2(2) are treated, in relation to the member's employment as a practitioner, as references to pensionable earnings.

(2) Regulation P2 is further modified so that, if a member's earnings in respect of employment as a practitioner are reduced during a period of absence from work by reason of illness or injury, the member's pensionable earnings will be calculated as described in sub-paragraphs (4) and (5) below (instead of on the basis of the member's earnings immediately before the absence started).

(3) Regulation P2 is further modified so that, if a member's earnings in respect of employment as a practitioner are suspended during a period of absence from work by reason of illness or injury, the member will be treated as continuing in pensionable employment for a period of 12 months from the date on which the member's earnings were suspended and the member will not be treated as having left pensionable employment in accordance with regulation P2(3) until the end of that 12 month period. During the 12 month period, the member's pensionable earnings will be calculated as described in sub-paragraphs (4) and (5) below.

(4) If the member is one of a number of practitioners who have elected as described in paragraph 4, each practitioner's pensionable earnings will be calculated as if the partnership's total aggregate earnings or total pensionable earnings were equal to the amount of the partnership's total aggregate earnings or total pensionable earnings during the 12 month period ending immediately before the member's earnings were reduced or suspended.

(5) Except where the member's pensionable earnings fall to be calculated as described in sub-paragraph (4) above, the member will be treated as having continued to receive the same average rate of pensionable earnings as during the 12 month period ending immediately before his earnings were reduced or suspended.

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## PART VIII

### RIGHT TO BUY ADDITIONAL BENEFITS

#### Right to buy additional benefits

**19.**—(1) In the case of members who are practitioners, regulations Q1 (right to buy additional service), Q2 (right to buy an unreduced retirement lump sum), Q3 and Q4 (paying by single payment) and Q5 (paying by regular additional contributions) are modified so that the cost of buying additional service and unreduced retirement lump sum and the benefits in respect of any additional service bought under regulation Q1 are calculated as described in this paragraph.

(2) Regulation Q1 is modified so that, if the member elects to pay for additional service by a single payment, the benefits in respect of the additional service will be calculated by increasing the member's pensionable earnings for the financial year in which the member elects to buy the additional service.

(3) The amount of the increase referred to in sub-paragraph (2) will be calculated using the formula—

$$\text{relevant earnings} \times \text{additional service bought}$$

where—

“relevant earnings” means the amount of remuneration by reference to which the amount of the single payment was calculated; and

“additional service bought” means the period of additional service that the member chooses to buy, calculated in complete years with a relevant daily proportion for each additional day.

(4) Regulation Q1 is further modified so that, if the member chooses to pay for additional service by regular additional contributions, the benefits in respect of the additional service will be calculated by increasing the member's pensionable earnings for the year in which the member stops paying those contributions.

(5) The amount of the increase referred to in sub-paragraph (4) will be calculated using the formula—

$$\text{relevant uprated earnings} \times \text{additional service bought}$$

where—

“relevant uprated earnings” means the yearly average of the part of the member's uprated earnings that is attributable to the period during which the member paid regular additional contributions; and

“additional service bought” means the period of additional service that the member chooses to buy, calculated in complete years with an additional proportion for each additional day.

(6) Paragraphs (4) and (5) of regulation Q3 are modified so that, for the purposes of Table 1 of Schedule 2, “remuneration” means, subject to sub-paragraph (7) below, the yearly average of a member's uprated earnings in respect of practitioner service before the date on which the Secretary of State receives notice in writing on the form provided exercising the member's right to buy additional service. For the purpose of this calculation, any officer service that is treated as practitioner service by virtue of paragraph 9 (officer service treated as practitioner service) will be ignored.

(7) If, when the Secretary of State receives a notice exercising a right to buy additional service, the member has not been in practitioner service for a complete quarter, “remuneration” will be calculated by reference to the member's uprated earnings at the end of the member's first complete quarter in practitioner service.

(8) Regulation Q5(5) is modified so that, if the member elects to pay for additional service or unreduced retirement lump sum by regular additional contributions, the contributions will be calculated as a percentage of pensionable earnings (instead of pensionable pay), in accordance with Table 3 of Schedule 2 (if the member is buying additional service) or Table 4 of Schedule 2 (if the member is buying an unreduced retirement lump sum).

(9) The upper limit on a dental practitioner's pensionable earnings under paragraph 8 (limit on pensionable earnings—dental practitioners) shall not apply to any increase in a member's pensionable earnings under this paragraph.

## PART IX

### TRANSFERS FROM OTHER PENSION ARRANGEMENTS

#### **Transfer from other pension arrangements**

**20.**—(1) In the case of members who are practitioners, regulations N1 (member's right to transfer accrued rights to benefits to the scheme) and N4 (transfers in respect of more than one member) are modified so that, if a transfer payment is accepted in respect of the member's rights under another occupational pension scheme, a personal pension scheme, self-employed pension arrangement or a buy-out policy, the benefits in respect of the transfer payment will be calculated as described in this paragraph.

(2) The benefits in respect of the transfer payment will be calculated by increasing the member's pensionable earnings for the financial year in which the member joined the scheme (or the financial year in which the transfer payment is received, if the payment is received more than 12 months after the member joined the scheme).

(3) The amount of the increase referred to in sub-paragraph (2) will be calculated by—

- (a) treating the member as entitled to a period of officer service equal to the period of employment that qualified the member for the rights in respect of which the transfer payment is being made or when a transfer payment is being made in respect of a self-employment pension arrangement, a period of service calculated in accordance with regulation N3;
- (b) calculating the final year's pensionable pay that would have given rise to a cash equivalent in respect of that officer service, under regulation M3 (amount of member's cash equivalent), equal to the amount of the transfer payment; and
- (c) increasing the member's pensionable earnings by an amount equal to the pensionable pay that the member would have received during that period of officer service if the member's pensionable pay had been equal to the final year's pensionable pay mentioned in paragraph (b) above throughout that period.

(4) For the purposes of sub-paragraph (3), the final year's pensionable pay mentioned in paragraph (b) of that sub-paragraph will be calculated in a manner that is consistent with the actuarial methods and assumptions referred to in—

- (a) regulation N2 (transfer made under the Public Sector Transfer Arrangements) where the transfer payment is made under the Public Sector Transfer Arrangements; or
- (b) regulation N3 (transfers that are not made under the Public Sector Transfer Arrangements) in any other case.

(5) The upper limit on a dental practitioner's pensionable earnings under paragraph 8 (limit on pensionable earnings—dental practitioners) will not apply to any increase in a member's pensionable earnings under this paragraph.

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## PART X

### CONCURRENT EMPLOYMENT

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

**21.**—(1) In the case of members who are practitioners, regulation R4 (members doing more than one job) is modified as described in this paragraph in relation to any practitioner who is in concurrent employment as an officer.

(2) A practitioner who opts not to contribute to the scheme in respect of his employment as a practitioner may, nevertheless, participate in the scheme in respect of concurrent employment as an officer.

(3) Regulation R4(2) is modified so that a practitioner may participate in the scheme in respect of concurrent whole-time or part-time employment as an officer, even if he also participates in the scheme in respect of employment as a practitioner.

(4) For the purposes of paragraph 12 (early retirement pension—ill health), any amount by which a member’s service in respect of concurrent employments exceeds the period during which the member carried on those employments will be ignored for the purpose of calculating the member’s total service.

(5) If a transfer payment is accepted in respect of a member who is contributing to the scheme in respect of employment as a practitioner and concurrent employment as an officer, the member may elect whether the benefits in respect of the transfer payment should be calculated as described in regulations N1 to N3 or as described in paragraph 20 (transfers from other pension arrangements).

## PART XI

### MEMBERS WHO RETURN TO NHS EMPLOYMENT AFTER PENSION BECOMES PAYABLE

#### **Reduction of pension**

**22.**—(1) In the case of members who are or have been practitioners, regulation S2 (reduction of pension) is modified as described in this paragraph.

(2) Regulation S2(11) is modified so that—

- (a) “pay” means the amount of pensionable earnings received by the member, for any financial year, from NHS employment (or what would have been his pensionable earnings had he been in pensionable employment);
- (b) “previous pay” means the average of the annual amounts of the member’s uprated earnings in respect of service as a practitioner (or service which is treated as practitioner service).

(3) In the case of a practitioner who becomes entitled to receive a pension in respect of both officer service and practitioner service, the member’s previous pay in respect of his practitioner service shall be increased by the amount of his previous pay in respect of his officer service.

(4) Where regulation S2(9) applies and the continuing employment is employment as a practitioner, the member’s previous pay as an officer shall be increased by the average of the annual amounts of the member’s uprated earnings in respect of the last 3 financial years before becoming entitled to receive the pension referred to in regulation S2(1).

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(5) In the case of a practitioner who becomes entitled to receive a pension under the scheme and who holds a continuing employment otherwise than as a practitioner, previous pay will be increased by the annual rate of remuneration of the continuing employment.

(6) Where a practitioner becomes entitled to receive a pension under the scheme and, preceding the date on which he became so entitled, the practitioner held concurrent pensionable employment as an officer, and the concurrent pensionable employment terminated before he became entitled to the pension, previous pay in relation to the practitioner service shall be increased as described in sub-paragraph (7).

(7) For the purpose of paragraph (6), previous pay shall be increased by that proportion of the member's pensionable pay or annual rate of pay (calculated as described in regulation S2(11)), whichever is the greater, that is appropriate to the member's last year of pensionable employment immediately before becoming entitled to the pension.

SCHEDULE 2

Part Q

PURCHASE OF ADDITIONAL SERVICE AND UNREDUCED RETIREMENT LUMP SUM  
(Regulation Q3(3))

Table 1

Paying for additional service by a single payment

Member's age when the Secretary of State receives notice of election (1)	Cost per £100 of remuneration for each year of additional service (2)
	£
20	25.20
21	24.70
22	24.20
23	23.70
24	23.20
25	22.70
26	22.20
27	21.80
28	21.40
29	21.10
30	20.90
31	20.70
32	20.50
33	20.30
34	20.10

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Member's age when the Secretary of State receives notice of election (1)	Cost per £100 of remuneration for each year of additional service (2)
35	20.00
36	20.00
37	20.00
38	20.00
39	20.00
40	20.00
41	20.00
42	20.00
43	20.00
44	20.00
45	20.10
46	20.30
47	20.50
48	20.70
49	20.90
50	21.00
51	21.00
52	21.00
53	21.00
54	21.00
55	21.10
56	21.30
57	21.60
58	21.90
59	21.90
60	21.70
61	21.50
62	21.30
63	21.10
64	21.00
65	20.80
66	20.30
67	19.70



Member's age when the Secretary of State receives notice of election (1)	Cost per £100 of remuneration for each year of additional service (2)
68	19.10
69	18.50

(Regulation Q4(3))

**Table 2**  
Paying for unreduced retirement lump sum by a single payment

Member's age when the Secretary of State receives notice of election (1)	Cost per £100 of remuneration for each year of service in respect of which unreduced retirement lump sum is bought (2)
	£
29	2.48
30	2.46
31	2.44
32	2.41
33	2.39
34	2.36
35	2.35
36	2.35
37	2.35
38	2.35
39	2.35
40	2.35
41	2.35
42	2.35
43	2.35
44	2.35
45	2.36
46	2.38
47	2.41
48	2.44
49	2.46
50	2.47

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Member's age when the Secretary of State receives notice of election (1)	Cost per £100 of remuneration for each year of service in respect of which unreduced retirement lump sum is bought (2)
51	2.47
52	2.47
53	2.47
54	2.47
55	2.48
56	2.50
57	2.50
58	2.50
59	2.50
60	2.50
61	2.50
62	2.50
63	2.50
64	2.50
65	2.50
66	2.50
67	2.50
68	2.50
69	2.50

(Regulation Q5(5))

**Table 3**

Paying for additional service by regular additional contributions

Member's age at next birthday after the Secretary of State receives notice of election	Percentage of pensionable pay for each complete year of additional service Birthday to which member has elected to pay contributions		
	55	60	65
20	.61	.50	.36
21	.64	.52	.38
22	.67	.54	.40
23	.70	.56	.42

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Member's age at next birthday after the Secretary of State receives notice of election	Percentage of pensionable pay for each complete year of additional service Birthday to which member has elected to pay contributions		
	55	60	65
24	.74	.58	.44
25	.78	.60	.46
26	.82	.62	.48
27	.86	.64	.50
28	.90	.66	.52
29	.94	.68	.54
30	.98	.70	.56
31	1.02	.72	.58
32	1.07	.75	.60
33	1.12	.78	.62
34	1.17	.81	.64
35	1.22	.85	.67
36	1.28	.89	.69
37	1.35	.93	.72
38	1.43	.98	.74
39	1.51	1.03	.77
40	1.60	1.09	.80
41	1.70	1.15	.83
42	1.83	1.22	.87
43	2.00	1.30	.91
44	2.20	1.39	.95
45	2.42	1.48	1.00
46	2.69	1.58	1.06
47	3.02	1.70	1.13
48	3.45	1.85	1.21
49	4.02	2.03	1.29
50	4.80	2.25	1.38
51	6.04	2.53	1.48
52	8.05	2.86	1.60
53	12.18	3.26	1.74
54		3.80	1.90

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Member's age at next birthday after the Secretary of State receives notice of election	Percentage of pensionable pay for each complete year of additional service Birthday to which member has elected to pay contributions		
	55	60	65
55		4.58	2.08
56		5.77	2.30
57		7.77	2.56
58		12.06	2.92
59			3.40
60			4.10
61			5.20
62			6.97
63			10.42

(Regulation Q5(5))

Table 4

Paying for unreduced retirement lump sum by regular additional contributions

Member's age at next birthday after the Secretary of State receives notice of election	Percentage of pensionable pay for each complete year of additional service in respect of which unreduced retirement lump sum is bought Birthday to which member has elected to pay contributions		
	55	60	65
29	.11	.08	.06
30	.12	.08	.07
31	.12	.08	.07
32	.13	.09	.07
33	.13	.09	.07
34	.14	.10	.08
35	.14	.10	.08
36	.15	.11	.08
37	.16	.11	.08
38	.17	.12	.09
39	.18	.12	.09
40	.19	.13	.09

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Member's age at next birthday after the Secretary of State receives notice of election	Percentage of pensionable pay for each complete year of additional service in respect of which unreduced retirement lump sum is bought Birthday to which member has elected to pay contributions		
	55	60	65
41	.20	.13	.10
42	.22	.14	.10
43	.24	.15	.11
44	.26	.16	.11
45	.29	.17	.12
46	.32	.19	.12
47	.36	.20	.13
48	.41	.22	.14
49	.47	.24	.15
50	.56	.27	.16
51	.71	.30	.17
52	.95	.34	.19
53	1.43	.38	.20
54		.45	.22
55		.54	.24
56		.68	.27
57		.91	.30
58		1.42	.34
59			.40
60			.48
61			.61
62			.82
63			1.23

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## SCHEDULE 3

Regulation V2

## REVOCATIONS

(1) Regulations	(2) References	(3) Extent of revocation
The National Health Service (Superannuation) (Scotland) Regulations 1980	<a href="#">S.I. 1980/1177</a>	The whole Regulations
The National Health Service (Superannuation) (Scotland) Amendment Regulations 1981	<a href="#">S.I. 1981/1680</a>	The whole Regulations
The National Health Service (Superannuation) (Scotland) Amendment Regulations 1983	<a href="#">S.I. 1983/272</a>	The whole Regulations
The National Health Service (Superannuation) (Scotland) Amendment Regulations 1988	<a href="#">S.I. 1988/1956</a>	The whole Regulations
The National Health Service (Superannuation) (Scotland) Amendment Regulations 1989	<a href="#">S.I. 1989/807</a>	The whole Regulations
The National Health Service (Superannuation) (Scotland) Amendment (No.2) Regulations 1989	<a href="#">S.I. 1989/1749</a>	The whole Regulations
The National Health Service (Superannuation) (Scotland) Amendment Regulations 1990	<a href="#">S.I. 1990/382</a>	The whole Regulations
The National Health Service (Superannuation, Premature Retirement and Injury Benefits) (Scotland) Amendment Regulations 1992	<a href="#">S.I. 1992/3046</a>	In Regulation 2 the words from “the Principal Regulations” to “Regulations 1980(c);”, and Regulations 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13

**EXPLANATORY NOTE**

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

These Regulations consolidate, with amendments, the provisions of the National Health Service (Superannuation) (Scotland) Regulations 1980 to 1992 which provide for the superannuation of persons engaged in the National Health Service in Scotland.

The main changes apart from minor drafting amendments, are as follows:—

- the introduction of a voluntary early retirement provision, where the employing authority agrees to meet the cost, for all members except medical and dental practitioners. Benefits will not be enhanced or reduced (regulation E4);
- the introduction of a voluntary early retirement provision, for all members, which will allow retirement between the ages of 50 and 60 with actuarially reduced benefits (regulation E5);
- provision is made for an increase in the amount of the lump sum benefit payable where a member dies in service to twice the member's final year's pensionable pay (regulation F1);
- the provisions under which female nurses, midwives, physiotherapists and health visitors are currently allowed to retire at age 55 are extended to male nurses etc. in relation to pensionable service from 17th May 1990. This provision is, however, withdrawn in relation to those who first become members of the scheme after the coming into force of these Regulations and in relation to those previous members who have a break in pensionable service of 5 years or more ending after that date (regulation R2);
- similarly, mental health officer status will no longer be available in relation to those who first become members of the scheme after the coming into force of these Regulations and for those who have a break of more than 5 years in their pensionable service ending after that date (regulation R3);
- provision is made for the suspension of pension in relation to members who return to NHS employment within 1 month of their pension becoming payable (regulation S1);
- provision in relation to abatement of pension for those who continue in or return to NHS employment after their pension becomes payable is limited to age 60, (regulation S2).