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STATUTORY INSTRUMENTS

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**2008 No. 653**

The National Health Service Pension Scheme Regulations 2008

PART 4

BENEFITS IN CASES OF MIXED SERVICE

CHAPTER 4.C

MODIFICATION OF BENEFITS

*Death benefits*

**4.C.2 Death benefits where member entitled to top-up**

(1) This regulation applies in relation to any benefit payable under Chapter 2.E of Part 2 and Chapter 3.E of Part 3 of these Regulations where the deceased member is (or would have been) entitled to a top-up amount under regulation 4.C.1.

(2) In calculating the amount of the benefit payable under Chapter 2.E of Part 2 of these Regulations, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension shall be treated as being the pension payable to the member had no benefit been payable in respect of any discrete period of pensionable service as an officer that gives rise to a top-up payment under regulation 4.C.1.

(3) In calculating the amount of the benefit payable under Chapter 3.E of Part 3 of these Regulations, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension shall be treated as being the sum of—

- (a) the pension payable under Part 3 of these Regulations, and
- (b) the top-up amount payable under regulation 4.C.1, inclusive of any increase payable under the Pensions (Increase) Act 1971 pursuant to paragraph (3) of that regulation.