

**2006 No.**

**NATIONAL HEALTH SERVICE**

**The National Health Service Superannuation Scheme (Scotland)  
Regulations 2006**

<i>Made</i> - - - -	2006
<i>Laid before the Scottish Parliament</i>	2006
<i>Coming into force</i> - -	2006

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

PART A

PRELIMINARY

**Citation commencement and extent**

**A1.**—(1) These Regulations may be cited as the National Health Service Superannuation Scheme (Scotland) Regulations 2006 and shall come into force on [ ] 2006.

(2) These Regulations extend to Scotland only.

**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—

- (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.

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<sup>(1)</sup> 1972 c.11. Section 10 was amended by the National Health Service (Scotland) Act 1972 (c.58), Schedule 7 Part II, the Pensions (Miscellaneous Provisions) Act 1990 (c.7) (“the 1990 Act”), sections 4(2) and 8(5), the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 7 and the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649), Article 108. Section 12 was amended by the 1990 Act, section 10. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750), article 2 and Schedule 1.

<sup>(2)</sup> See the Superannuation Act 1972, section 10(1). This function was transferred to the Treasury by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670), Article 2 and is still exercisable by virtue of S.I. 1999/1750, article 2 and Schedule 1.

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(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:—

<i>Expression</i>	<i>Meaning</i>
“the 1980 Regulations”	The National Health Service (Superannuation) (Scotland) Regulations 1980 <sup>(3)</sup> ;
“the 1995 Regulations”	The National Health Service Superannuation Scheme (Scotland) Regulations 1995 <sup>(4)</sup> ;
“the 1993 Act”	The Pension Schemes Act 1993 <sup>(5)</sup> ;
“the 1995 Act”	The Pensions Act 1995 <sup>(6)</sup> ;
“the 1978 Act”	The National Health Service (Scotland) Act 1978 <sup>(7)</sup> ;
“the 1997 Act”	The National Health Service (Primary Care) Act 1997 <sup>(8)</sup> ;
“the 1999 Act”	The Welfare Reform and Pensions Act 1999 <sup>(9)</sup> ;
“additional services”	(a) with regard to a GMS practice, the meaning given in Schedule 1 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 <sup>(10)</sup> ; and  (b) with regard to any other performer or provider of primary medical services, means services which, if provided by a GMS practice, would be additional services within the meaning given in Schedule 1 of those Regulations;
“active member”	A person who is in pensionable service under the scheme;
“age”	Shall be construed in accordance with section 181(1) of the 1993 Act <sup>(11)</sup> ;

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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. The Regulations were repealed by S.I. 1995/365.

<sup>(4)</sup> S.I. 1995/365 as amended by: S.I. 1997/1434 and 1916, 1998/1593, 1999/443 and 2001/3649 (art. 244) and S.S.I. 2001/437 and 465, 2003/55, 270 and 517. 2005/512 and [ ] [2005/2011]

<sup>(5)</sup> 1993 c.48.

<sup>(6)</sup> 1995 c.26.

<sup>(7)</sup> 1978 c.29

<sup>(8)</sup> 1997 c.46.

<sup>(9)</sup> 1999 c.30.

<sup>(10)</sup> S.S.I. 2004/115

<sup>(11)</sup>To which there are amendments not relevant to these Regulations.

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<i>Expression</i>	<i>Meaning</i>
“appropriate percentage”	The meaning given in regulation T5(4);
“appropriate rights”	The meaning given in regulation T7(3);
“assistant practitioner”	The meaning given in paragraph 1 of Schedule 1;
“buy-out policy”	A policy of insurance or annuity contract that is appropriate for the purposes of section 19 <sup>(12)</sup> of the 1993 Act (discharge of liability where guaranteed minimum pensions secured by insurance policies or annuity contracts) and satisfies any requirements of HM Revenue and Customs;
“cash equivalent”	Shall be construed in accordance with Chapter IV of Part IV of the 1993 Act;
“CCT”	A Certificate of Completion of Training awarded under article 8 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003 <sup>(13)</sup> including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order;
“certification services”	Services related to the provision of the medical certificates listed in Schedule 3 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 <sup>(14)</sup> ;
“collaborative services”	Primary medical services provided by a GP performer, a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider under or as a result of an arrangement between-  (a) the Scottish Ministers or a Health Board; and  (b) a local authority,  under section 15 <sup>(15)</sup> of the 1978 Act, under which the Scottish Ministers or the Health Board is responsible for providing services for purposes related to the provision of health care;

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<sup>(12)</sup> Section 19 was amended by S.I. 2001/3649, Article 116. *See* also section 81 of that Act.

<sup>(13)</sup> S.I. 2003/1250.

<sup>(14)</sup> S.S.I. 2004/115.

<sup>(15)</sup> Section 15 was amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), Schedule 1.

DRAFT

*Expression*

“commissioned services”

*Meaning*

Services provided under a contract between-

(a) a GP performer, a GMS practice, a section 17C agreement provider an HBPMS contractor or an OOH provider; and

(b) either-

(i) a Special Health Board, which relates to the provision of health care; or

(ii) the Scottish Ministers or a Health Board under section 16(1) of the 1978 Act,

which is for the purposes of the health service;

*Expression*

“Contracting Health Board”

*Meaning*

(a) In the case of a non GP provider who is-

(i) a partner in a partnership that-

(aa) is a GMS practice; or

(bb) has entered into a section 17C agreement; or

(cc) is an HBPMS contractor and has entered into a contract for the provision of primary medical services;

(ii) a shareholder in a company limited by shares that is-

(aa) a GMS practice; or

(bb) a section 17C agreement provider; or

(cc) an HBPMS contractor and has entered into a section 17C agreement for the provision of primary medical services; or

(iii) an individual who is a GMS practice, section 17C agreement provider or an HBPMS contractor,

the Health Board with which that partnership, company, practice, provider or contractor has entered into a contract or agreement referred to in those provisions;

(b) in the case of a principal practitioner, the Health Board on whose medical performers list their name appears; and

(c) in the case of an assistant practitioner or locum practitioner, the Health Board engaging the practitioner under a contract of services or for services and on whose medical performers list their name appears;

“contracting-out requirements”

The requirements set out in sections 13 to 23<sup>(16)</sup> of the 1993 Act;

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<sup>(16)</sup> Section 13 was repealed in part by the 1995 Act, Schedules 5 and 7; section 14 was amended by the 1995 Act, Schedules 5 and 7, S.I. 1996/1461, Regulation 6, S.I. 1996/1462, Regulations 12 and 13 and Schedule 2, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) Schedule 1 and the Proceeds of Crime Act 2002 (c.29), Schedule 11; section 15 was amended by S.I. 1995/559, S.I. 1998/470, Article 5, S.I. 2000/440, Article 5 and S.I. 2001/207, Article 5; section 15A was inserted by the 1999 Act, section 32; section 16 was amended by the 1995 Act, Schedule 5, S.I. 1996/1172, Regulation 65, S.I. 1996/1461, Regulation 6 and the 1999 Act, section 18 and Schedule 2; section 17 was amended by the 1995 Act, Schedule 5, S.I. 1995/559, the 1999 Act, Schedule 1, the Child Support, Pensions and Social Security Act 2000 (c.19), sections 56 and 85

DRAFT

*Expression*

“core hours”

*Meaning*

The period beginning at 0800 hours and ending at 1830 hours on any day apart from Saturday, Sunday, Christmas Day, New Year’s Day and any other public or local holiday which has been agreed to in writing by the Health Board when entering into a GMS contract;

“dental hygienist”

A person whose name is registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental hygienist <sup>(17)</sup>;

“dental list”

A list prepared in accordance with regulations made under section 25(2)(a) of the 1978 Act;

“dental pilot scheme employee”

An individual who, in connection with the provision of personal dental services in accordance with a pilot scheme, is employed by an individual or body providing those services;

“dental therapist”

A person whose name is registered in the dental care professionals register established under section 36B of the Dentists Act 1984 under the title of dental therapist;

“dependant child”

The meaning given by regulation H1;

“dispensing services”

The provision of drugs, medicines and such appliances which are included in the list prepared by the Scottish Ministers under section 27(1) of the 1978 Act;

“employing authority”

(a) a Health Board, Special Health Board or NHS National Services Scotland (established under section 2 and section 10 of the 1978 Act); or

(b) a person who is providing piloted services; or

(c) the Mental Welfare Commission established under section 4 of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(18)</sup>; or

(d) an OOH provider; or

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and Schedules 5 and 9, S.I. 2000/440, Article 5, S.I. 2001/207, Article 5 and the Pensions Act 2004 (c.35), section 284; section 19 was amended by S.I. 2001/3649, Article 116, section 20 was amended by S.I. 1996/1462, Regulations 12 and 13 and Schedule 2 and the Child Support, Pensions and Social Security Act 2000 (c.19), Schedule 5; section 21 was amended by the Pensions Act 2004 (c.35), section 284; section 22 was repealed by the 1995 Act Schedules 5 and 7; section 23 was amended by the 1995 Act, Schedules 5 and 7.

<sup>(17)</sup>.1984 c.24. Section 36B was inserted by the Dentists Act 1984 (Amendment) Order 2005 (S.I. 2005/2011), Article 29.

<sup>(18)</sup> asp 13.

DRAFT

*Expression*

*Meaning*

- (e) an HBPMS contractor; or
  - (f) a GMS practice; or
  - (g) a section 17C agreement provider; or
  - (h) any other body constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of the scheme;
- “enhanced services”
- (a) with regard to a GMS practice, the meaning given in regulation 2(1) of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004; and
  - (b) with regard to any other performer or provider of primary medical services, services which, if provided by a GMS practice, would be enhanced services within the meaning given in regulation 2(1) of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004;
- “essential services”
- Services required to be provided in accordance with regulation 15 of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004;
- “ex-civil partner”
- A former civil partner to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;
- “ex-spouse”
- A former spouse to whom pension credit rights under the Scheme have been or are to be allocated following a pension sharing order;
- “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–

$$\frac{\textit{Pensionable pay}}{\textit{Number of days' pensionable employment}} \times 365;$$

*Expression*

*Meaning*

- (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;
- “GMS contract” A contract under section 17J of the 1978 Act<sup>(19)</sup> (Health Boards’ power to enter into general medical services contract) or under Article 13 of the General Medical Services and Section 17C Agreements (Transitional and other Ancillary Provisions) (Scotland) Order 2004<sup>(20)</sup>;
- “GMS practice”
- (a) a registered medical practitioner; or
  - (b) two or more individuals practising in a partnership; or
  - (c) a company limited by shares,
- with whom a Health Board has entered into a GMS contract;
- “GP performer”
- A registered medical practitioner, other than a GP registrar or a locum practitioner, whose name is included in a medical performers list and who performs essential services, additional services, enhanced services, dispensing services, collaborative services, commissioned services, OOH services or certification services, or a combination thereof-
- (a) under a GMS contract, section 17C agreement or an HBPMS contract; or
  - (b) on behalf of an OOH provider; or
  - (c) under a contract of service or for services with a Health Board which relates to arrangements by which it is to provide services under section 2C of the 1978 Act<sup>(21)</sup>(Functions of Health Boards: primary medical services);

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<sup>(19)</sup> Section 17J was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.

<sup>(20)</sup> S.S.I. 2004/163.

<sup>(21)</sup> Section 2C was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 1.

*Expression*  
“GP provider”

*Meaning*  
A GP performer who is-

- (a) a GMS practice, a section 17C agreement provider, an HBPMS contractor; or
- (b) a partner in a partnership that is a GMS practice, a section 17C agreement provider or an HBPMS contractor; or
- (c) a shareholder in a company limited by shares that is a GMS practice, section 17C agreement provider or an HBPMS contractor,

and who performs medical services as or on behalf of that practice, provider or contractor;

“GP registrar”

- (a) Until the coming into force of article 5 of the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003, a medical practitioner who is being trained in general practice by a medical practitioner who-
  - (i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) (Scotland) Regulations 1998<sup>(22)</sup>; and
  - (ii) performs primary medical services; and
- (b) from the coming into force for all purposes of that article, a general medical practitioner who is being trained in general practice by a medical practitioner who is approved under that article for the purposes of providing training under article 5(1)(c)(i) of that Order, whether as part of training leading to the award of a CCT or otherwise;

“guaranteed minimum pension”

Shall be construed in accordance with section 14 of the 1993 Act<sup>23</sup>;

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<sup>(22)</sup> 1998/5 as amended by S.I. 1998/669 and S.S.I. 2000/23.

<sup>(23)</sup> Section 14 was amended by the Pensions Act 1995 (c.26), Schedules 5 and 7, the Social Security (Transfer of Functions, etc.) Act 1999 (c.2), Schedule 1, paragraph 38 and the Proceeds of Crime Act 2002 (c.29), Schedule 11, paragraph 22 and is modified by S.I. 1996/1461 and 1462.

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*Expression*

“HBPMS contract”

*Meaning*

Arrangements for the provision of services in accordance with section 2C(2) of the 1978 Act between a Health Board and a HBPMS contractor;

“HBPMS contractor”

A person with whom a Health Board has made arrangements under section 2C(2) of the 1978 Act, but only if that person is also a person who would be eligible to enter into a GMS contract or a section 17C agreement for the provision of primary medical services and has not entered into such a GMS contract or section 17C agreement;

“the health service”

The meaning given in section 108 of the 1978 Act<sup>(24)</sup>;

“health service scheme”

The meaning given by regulation R7(1);

“HM Revenue and Customs”

The Commissioners of Her Majesty’s Revenue and Customs;

“indexed”

In accordance with the Government Index of Retail Prices;

“local authority”

A council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (constitution of councils) <sup>(25)</sup>;

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<sup>(24)</sup> Section 108 was amended by the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2, the 1999 Act, sections 46 and 65 and Schedule 4, the Primary Medical Services (Scotland) Act 2004 (asp 1), Schedule 1 and the National Health Service Reform (Scotland) Act 2004 (asp 7), Schedule 2.

<sup>(25)</sup> 1994 c.39

*Expression*

“locum practitioner”

*Meaning*

A registered medical practitioner (other than a GP registrar) whose name is included in a medical performers list and who is engaged, otherwise than in pursuance of a commercial arrangement with an agent, under a contract for services by-

- (a) a GMS practice; or
- (b) a section 17C agreement provider; or
- (c) an HBPMS contractor; or
- (d) an OOH provider; or
- (e) a Health Board,

to deputise or assist temporarily in the provision of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services or collaborative services (or any combination of those services);

“medical performers list”

A list prepared by a Health Board pursuant to regulation 4(1) of the National Health Service (Primary Medical Services Performers List) (Scotland) Regulations 2004<sup>(26)</sup>;

“member”

A person who has been included in the scheme and in respect of whom benefits under the scheme are, or will become payable;

“member of the Scheme”

A member of the Scheme and includes an active member, a deferred member and a pension credit member;

“mental health officer”

The meaning given in regulation R3(16);

“NHS dental employee”

An individual who, in the connection with the provision of dental health services in the health service, is employed by-

- (a) a Health Board; or
- (b) a registered dentist, including one who is providing personal dental services in accordance with a pilot scheme;

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<sup>(26)</sup> S.S.I. 2004/114

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*Expression*

“NHS employee”

*Meaning*

The meaning given in section 2(3) of the 1997 Act<sup>(27)</sup>;

“NHS employment”

Employment with an employing authority;

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<sup>(27)</sup> Section 2(3) was relevantly amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), Schedule 1, paragraph 2.

*Expression*

“non GP provider”

*Meaning*

(a) A partner in a partnership that is a GMS practice, who is not a GP provider and who demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that practice; or

(b) a partner in a partnership all of whose members have entered into a section 17C agreement for the provision of primary medical services, provided that the partner is not a GP provider and that the partner demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that partnership; or

(c) a partner in a partnership that is an HBPMS contractor which has entered into an HBPMS contract for the provision of primary medical services, provided that the partner is not a GP provider and that the partner demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that HBPMS contractor; or

(d) a shareholder in a company limited by shares that is-

(i) a GMS practice; or

(ii) a section 17C agreement provider; or

(iii) an HBPMS contractor that has entered into a section 17C agreement or HBPMS contract for the provision of primary medical services,

provided that shareholder is not a GP provider, and that the shareholder demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that practice, provider or contractor; or

(e) an individual who is a section 17C agreement provider or an HBPMS contractor, provided that the individual is not a GP provider, and that the individual demonstrates to the satisfaction of the Scottish Ministers that he or she assists in the provision of NHS services provided by that practice or contractor;

“normal benefit age”

Age 60;

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*Expression*

“occupational pension scheme”

*Meaning*

An occupational pension scheme within the meaning of section 1(1) of the 1993 Act<sup>(28)</sup>

- (a) approved by the Inland Revenue for the purposes of Chapter I of Part XIV of the Taxes Act<sup>(29)</sup> (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)<sup>30</sup>; or
- (c) a scheme to which section 608 of the Taxes Act (superannuation funds approved before 6th April 1980)<sup>31</sup> applies;

“officer”

A person (other than a GP performer) employed by an employing authority;

“OOH provider”

Shall be construed in accordance with regulation A3;

“OOH services”

Services which are required to be provided in the out of hours period and which, if provided during core hours by a GMS practice to patients to whom the practice is required by its GMS contract to provide essential services, would be or would be similar to essential services;

“ophthalmic medical practitioner”

A medical practitioner providing general ophthalmic services under the 1978 Act;

“opting-out”

Shall be construed in accordance with regulation B4;

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<sup>(28)</sup> Section 239 of the Pensions Act 2004 (c.35) introduced a new definition of “occupational pension scheme” into section 1 of the 1993 Act.

<sup>(29)</sup> Certain provisions of Chapter I of Part XIV of the Taxes Act are prospectively repealed by the Finance Act 2004 (c.12), Schedule 42, Part 3.

<sup>(30)</sup> Section 591 is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

<sup>(31)</sup> Section 608 is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

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*Expression*

“out of hours period”

*Meaning*

(a) the period beginning at 1830 hours on any day from Monday to Thursday and ending at 0800 hours the following day;

(b) the period between 1830 hours on Friday and 0800 hours the following Monday; and

(c) Christmas Day, New Year’s Day and any other local or public holiday which has been agreed in writing by the Health Board when entering into a GMS contract,

and part of an out of hours period means any part of any one or more of the periods described in sub-paragraphs (a) to (c);

“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;

“pension credit”

The meaning given in regulation T3(b);

“pension credit benefit”

In relation to the Scheme the benefits payable under the Scheme to or in respect of a pension credit member by virtue of his or her appropriate rights under the Scheme attributable to a pension credit;

“pension credit member”

An individual who is a member of the Scheme, either,

- (i) solely for the provision of a pension credit benefit, or,

*Expression*

*Meaning*

- (ii) for the wholly separate provision of a pension credit benefit, where benefits accrue or have accrued to that individual under the Scheme for any other reason;

“pension credit rights”

Rights to future benefits under the Scheme which are attributable to a pension credit;

“pension debit”

The meaning given in regulation T3(a);

“pension debit member”

A member, whether an active member, a deferred member or a pensioner member, whose shareable rights under the Scheme are subject to a pension debit;

“pension sharing order or provision”

Any order or provision which is mentioned in section 28(1) of the 1999 Act<sup>(32)</sup> or Article 25(1) of the Welfare Reform and Pensions (Northern Ireland) Order 1999<sup>(33)</sup>;

“personal dental services”

The meaning given in section 1(8) of the 1997 Act;

“personal pension scheme”

A personal pension scheme within the meaning of Chapter IV of Part XIV of the Taxes Act (personal pension schemes)<sup>(34)</sup> which is approved by the Inland Revenue for the purposes of that Chapter;

“pilot scheme”

The meaning given in section 1(1) of the 1997 Act<sup>(35)</sup>;

“piloted services”

The meaning given in section 1(4) of the 1997 Act;

“practice staff”

A person (other than an assistant practitioner, principal practitioner, GP registrar or non GP provider) employed by a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider to assist in the provision of the services they provide;

“practitioner”

- (a) A registered medical practitioner, other than a GP registrar, who is a locum practitioner, a GP provider or a GP performer;
- (b) a registered dentist or a person treated as a practitioner under regulation R13,

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<sup>(32)</sup> Section 28(1) was amended by the Civil Partnership Act 2004 (c.33), Schedules 27 and 30.

<sup>(33)</sup> S.I. 1999/3147 (N.I.11).

<sup>(34)</sup> Chapter IV is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

<sup>(35)</sup> Section 1(1) was relevantly amended by the Primary Medical Services (Scotland) Act 2004 (asp 1), Schedule 1, paragraph 2.

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*Expression*

*Meaning*

but excluding a person who is paid wholly by way of salary by a Health Board or a person treated as an officer under regulation R13;

“preservation requirements”

The requirements of Chapter I of Part IV of the 1993 Act<sup>(36)</sup> relating to preservation of benefits under occupational pension schemes;

“primary medical services”

Shall be construed in accordance with section 2C(5) of the 1978 Act<sup>(37)</sup>;

“principal practitioner”

The meaning given in paragraph 1 of Schedule 1;

“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;

“registered dentist”

The meaning given in section 53(1) of the Dentists Act 1984<sup>(38)</sup>

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<sup>(36)</sup> Sections 69 to 82 of the 1993 Act. Sections 71 and 72 were amended by the Pensions Act 2004 (c.35), section 263; section 73 was amended by the 1999 Act sections 18 and 88 and Schedule 2; section 84 was amended by the Pensions Act 2004, section 263; sections 78, 79 and 80 were repealed by the 1995 Act, Schedules 3 and 7.

<sup>(37)</sup> Section 2C was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1).

<sup>(38)</sup> 1984 c.24.

*Expression*

“Section 9(2B) rights”

*Meaning*

(a) Rights to the payment of pensions and accrued rights to pensions (other than rights attributable to voluntary contributions) under a scheme contracted-out by virtue of section 9(2B) of the 1993 Act<sup>(39)</sup>, so far as attributable to an earner’s service (within the meaning of sections 3, 4 and 112 of the Social Security Contributions and Benefits Act 1992<sup>(40)</sup>) on or after 6<sup>th</sup> April 1997 ; and

(b) Where a transfer payment has been made to such a scheme, and rights arising under the scheme as a consequence of that payment which are derived directly or indirectly from-

(i) such rights as are referred to in sub-paragraph (a) under another scheme contracted-out by virtue of section 9(2B) of that Act; or

(ii) protected rights under another occupational pension scheme or under a personal pension scheme attributable to payments or contributions in respect of contracted-out employment on or after 6<sup>th</sup> April 1997.

“Section 17C agreement”

An agreement made under section 17C<sup>(41)</sup> of the 1978 Act;

“Section 17C agreement provider”

Any person or body who is providing primary medical services in accordance with a section 17C agreement;

“quarter”

A three month period ending on the last day of March, June, September or December;

“Regulatory Authority”

The meaning given in regulation T10(4));

“relevant daily proportion”

1/365th of the amount that would apply in respect of one year;

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<sup>(39)</sup> Section 9(2B) was inserted by the 1995 Act, section 136(3).

<sup>(40)</sup> 1992 c.4. Section 3 is amended by the Social Security Act 1998 (c.14) (the “1998 Act”), sections 48 and 49 and the Social Security Contributions (Transfer of Functions etc) Act 1999 (c.2) (the “1999 Act”) section 2 and Schedule 3, paragraph 3. Section 4 is amended by the 1998 Act, section 50 and Schedules 1 and 2, the 1999 Act, section 2 and Schedule 3, paragraph 4, the Child Support, Pensions and Social Security Act 2000 (c.19) section 74, the Employment Act 2002 (c.22) Schedule 7, paragraph 3, the Finance Act 2003 (c.14), Schedule 22, paragraph 48 and the Income Tax (Earnings and Pensions) Act 2003 (c.1), Schedule 6, paragraph 172. Section 112 is amended by the Employment Rights Act 1996 (c.18), Schedule 1, paragraph 51 and the 1999 Act, Schedule 3, paragraph 21.

<sup>(41)</sup> Section 17C was inserted by the National Health Service (Primary Care) Act 1997 (c.46), section 21(2)

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*Expression*

“remuneration”

*Meaning*

For the purposes of Tables 1 and 2 of Schedule 3 as defined in regulation Q3(4) (paying for additional service by single payment) and Q4(5) (paying for unreduced retirement lump sum by single payment);

“safeguarded percentage”

The meaning given by section 68A(3) or (4), as the case may be of the 1993 Act<sup>(42)</sup>;

“safeguarded rights”

The meaning given by section 68A of the 1993 Act;

“scheme”

Shall be construed in accordance with regulation A2(2)(b);

“shareable rights”

The meaning given by section 27(2) of the 1999 Act and means any rights under a pension arrangement other than as described in Regulation 2 of the Pension Sharing (Valuation) Regulations 2000<sup>(43)</sup>;

“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, other than a nurse consultant, or a 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<sup>(44)</sup>;

“transfer day”

The meaning given in regulation T5(4);.

“transfer values laws”

Chapter IV of Part IV of the 1993 Act<sup>(45)</sup>;

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<sup>(42)</sup> Section 68A was inserted by the 1999 Act, section 36.

<sup>(43)</sup> S.I. 2000/1052.

<sup>(44)</sup> 1988 c.1.

<sup>(45)</sup> Sections 93 to 101 of the 1993 Act. Section 93A was added by the 1995 Act, section 153. Sections 101A to 101AI were added by the 1999 Act, section 37. Section 93 was amended by the 1995 Act, section 152 and the 1999 Act, section 84 and Schedule 12; section 93A was amended by the 1999 Act, section 84 and Schedule 12; section 94 was amended by the 1995 Act, section 154, the 1999 Act, section 84 and Schedule 12 and the Pensions Act 2004 (c.35), Schedule 12; section 95 was amended by the 1995 Act, Schedule 6, the Child Support, Pensions and Social Security Act 2000 (c.19), sections 56, 85, Schedule 5 and 9 and S.I. 2001/3649 Article 121; section 96 was amended by the 1995 Act, Schedule 5 and the 1999 Act, sections 18, 84 and 88 and Schedules 2, 12 and 13; section 97 was amended by the 1995 Act, Schedule 6, the Child Support, Pensions and Social Security Act 2000, section 56 and Schedule 5; section 98 was amended by the 1995 Act, Schedule 6, the 1999 Act, section 84 and Schedule 12 and the Child Support, Pensions and Social Security Act 2000, sections 56 and 85 and Schedules 5 and 9; section 99 was amended by the 1995 Act, Schedule 6 and the Pensions Act 2004, Schedules 12 and 13; section 100 was amended by the 1999 Act, section 84 and Schedule 12; section 101E was amended by the Civil Partnership Act 2004 (c.33), Schedule 27; section 101F was amended by S.I. 2001/3649, Article 121; section 101J was amended by the Pensions Act 2004, Schedule 12 and section 101J was amended by the Pensions Act 2004, Schedule 13. Sections 93, 95, 98 and 99 are modified by The Occupational

*Expression*  
“whole-time service”

*Meaning*  
Service under a contract providing for service at standard hours, half-days or sessions for the grade.

### **Approved Out of Hours providers**

**A3.**—(1) For the purposes of these Regulations, an “OOH provider” is-

(a) a company limited by guarantee (which is not otherwise an employing authority)-

(i) in which all the members of the company are registered medical practitioners, HBPMS contractors, GMS practices or section 17C agreement providers and the majority of those members are-

(aa) HBPMS contractors, GMS practices or section 17C agreement providers whose HBPMS contracts, GMS contracts or section 17C agreements require them to provide OOH services; or

(bb) registered medical practitioners who are partners or shareholders in a HBPMS contractor, GMS practice or section 17C agreement provider which is a partnership or a company limited by shares and which is required to provide OOH services under its HBPMS contract, GMS contract or section 17C agreement;

(ii) which has a contract with a Health Board, an HBPMS contractor, a GMS practice or a section 17C agreement provider for the provision of OOH services; and

(iii) in respect of which a Health Board appointed by the Scottish Ministers to act on their behalf-

(aa) is satisfied that the provision of OOH services by the company is wholly or mainly a mutual trading activity;

(bb) is satisfied that the company has met all the conditions for being an OOH provider in this regulation; and

(cc) has, pursuant to a written application made by the company to it for that purpose, approved the company as an employing authority; or

(b) some other body corporate (which is not otherwise an employing authority) which-

(i) operates in the interests of those who are the recipients of the primary medical services it provides or of the general public;

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Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847), Regulation 15. Section 93 was modified by the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (SI 2000/1048), Regulation 3.

- (ii) operates on a not for profit basis;
- (iii) is not an associated company in relation to another person;
- (iv) has memorandum or articles or rules which-
  - (aa) prohibit the payment of dividends to its members;
  - (bb) require its profits (if any) or other income to be applied in promoting its objects; and
  - (cc) require all assets which would be otherwise available to its members generally to be transferred on its winding up either to another body which operates on a not for profit basis and whose purpose is to provide health or social care for the benefit of the community or to another body the objects of which are the promotion of charity and anything incidental or conducive thereto;
- (v) has at least one member who is-
  - (aa) an HBPMS contractor, GMS practice or a section 17C agreement provider; or
  - (bb) a partner in a partnership which is an HBPMS contractor, GMS practice or a section 17C agreement provider; or
  - (cc) a shareholder in a company limited by shares that is a HBPMS contractor, GMS practice or a section 17C agreement provider;
- (vi) has a contract with a Health Board, an HBPMS contractor, GMS practice or section 17C agreement provider, for the provision of OOH services; and
- (vii) is approved as an employing authority by a Health Board appointed by the Scottish Ministers to act on their behalf-
  - (aa) pursuant to a written application made by the body to it for that purpose; and
  - (bb) that Board being satisfied that the body has met all the conditions for being an OOH provider in this regulation.

(2) For the purposes of paragraph (1)(b)(iii), a body corporate is to be treated as another person's "associated company" if that person has control of it, except where that person is an employing authority, and for these purposes a person shall be taken to have control of a body corporate if they exercise, or are able to exercise, or are entitled to acquire direct or indirect control over its affairs.

(3) A company limited by guarantee or other body corporate which provides or is to provide OOH services and which wishes to be approved as an employing authority shall

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make a written application to a Health Board appointed by the Scottish Ministers to act on their behalf (“the appointed Board”)

(4) An application referred to in paragraph (3) may specify a date from which approval by the appointed Board (if given) shall have effect (“the nominated date”).

(5) Where, before 21<sup>st</sup> February 2006-

(a) a company limited by guarantee or other body corporate makes an application which contains a nominated date earlier than the date on which approval is subsequently given (“the approval date”); and

(b) the appointed Board is satisfied that, throughout the period beginning with the nominated date and ending with the approval date, the company or other body corporate has satisfied the conditions for approval,

that approval shall be treated as having been given on the nominated date.

(6) Where before 21<sup>st</sup> February 2006-

(a) a company limited by guarantee or other body corporate makes an application which contains a nominated date later than the approval date; and

(b) the appointed Board is satisfied that the company or other body corporate will satisfy the conditions for approval at that later date,

that approval shall take effect on the nominated date.

(7) Where, on or after 21<sup>st</sup> February 2006, a company limited by guarantee or other body corporate makes an application and-

(a) the appointed Board is satisfied that the company or other body corporate meets the conditions for approval or will do so at any nominated date which is later than the approval date; and

(b) it approves that application,

that approval shall take effect on the later of the nominated date and approval date.

(8) Where-

(a) paragraph (5) or (6) applies, the NHS employment shall be treated as commencing on the nominated date;

(b) paragraph (7) applies, it shall be treated as commencing on the later of the nominated date (if any) and the approval date.

(9) For the purposes of this regulation-

- (a) the conditions for approval are those referred to in paragraph (1)(a) or (b) as the case may be; and
  - (b) the nominated date cannot be earlier than 1<sup>st</sup> April 2004.
- (10) The appointed Board may give an OOH provider a notice in writing terminating its participation in the scheme where that provider-
- (a) does not have in force a guarantee, indemnity or bond as required by the Scottish Ministers in accordance with regulation D2(8); or
  - (b) has ceased to satisfy the conditions for approval; or
  - (c) has notified or has an obligation to notify the Board that any one of the following events has occurred in respect of it-
    - (i) a proposal for a voluntary arrangement has been made or approved under Part 1 of the Insolvency Act 1986 <sup>(46)</sup> (“the 1986 Act”), or
    - (ii) an administration application has been made, or a notice of intention to appoint an administrator has been filed with the court, or an administrator has been appointed under Schedule B1 of the 1986 Act, or
    - (iii) a receiver, manager or administrative receiver has been appointed under Part III of the 1986 Act, or
    - (iv) a winding up petition has been presented, a winding up order has been made or a resolution for voluntary winding up has been passed under Part IV or Part V of the 1986 Act or an instrument of dissolution has been drawn up in accordance with section 58 of the Industrial and Provident Societies Act 1965 <sup>(47)</sup>; or
    - (v) notice has been received by it that it may be struck off the register of companies, or an application to strike it off has been made, under Part XX of the Companies Act 1985 <sup>(48)</sup>.
- (11) An OOH provider-
- (a) shall give the appointed Board notice in writing upon the occurrence of any of the events referred to in paragraph (10)(c) and shall give such notice on the same day as that event;
  - (b) that wishes to cease to participate in the scheme shall give the appointed Board and its employees not less than 3 months notice in writing (to commence with the date of the notice) of that fact.

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<sup>(46)</sup> 1986 c.45

<sup>(47)</sup> 1965 c.12

<sup>(48)</sup> 1985 c.6

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- (12) An OOH provider shall cease to participate in the scheme on-
- (a) such date as the appointed Board may specify in notice under paragraph (10); or
  - (b) the day upon which the period referred to in paragraph (11)(b) expires where a notice under that sub-paragraph (b) has been given.

## 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) officers; and
  - (b) medical and dental practitioners, assistant and associate practitioners and GP registrars.
- (2) Each eligible person shall be included in the scheme automatically upon commencing NHS employment unless that person has made an election under regulation B4 (opting out of the scheme) to opt out of the scheme.
- (3) A person who, on 1st September 1997, was already in NHS employment but is not included in the scheme shall not be included automatically, but may elect to be included in the scheme, if eligible in terms of paragraph (1), by giving notice in writing to the Scottish Ministers at any time, subject to paragraph (4). The person shall 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.
- (4) A person may not elect to be included in the scheme in terms of paragraph (3) during a period of absence from work for any reason.
- (5) A person who is included in the scheme may opt out at any time in accordance with regulation B4.

#### **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 2005<sup>(49)</sup> in any hospital vested in the Scottish Ministers;
- (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 that person to join the scheme;
- (e) a person, other than a registered dentist or a dental therapist, who is employed as a dental pilot scheme employee otherwise than by a Health Board, and who either—
  - (i) was, immediately before the commencement of such employment, an NHS dental employee who was not eligible to join the scheme; or
  - (ii) has not previously been in employment as an NHS dental employee; and
- (f) a provider of personal dental services under a pilot scheme to whom these Regulations did not apply immediately before the commencement of the pilot scheme, other than a registered dentist or a dental therapist.

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

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

- (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, the 1995 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.

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<sup>(49)</sup> S.S.I. 2005/393.

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(2) Where, following an application under regulation A3(4) an OOH provider is approved as an employing authority, an employee of such a provider who does not wish to, or who no longer wishes to, participate in the scheme-

(a) may opt out of it from any day falling within the period specified in paragraph (3) by giving notice in writing to that provider; and

(b) will be treated as having left pensionable employment on the date on which that notice takes effect.

(3) For the purposes of paragraph (2), that period-

(a) starts on the date on which NHS employment is treated as commencing under regulation A3(7); and

(b) ends on the date on which the notice is received by the OOH provider.

(4) A notice referred to in paragraph (2) must be given no later than one month from the end of the pay period in which the date on which approval of an application under regulation A3 falls.

(5) A notice-

(a) referred to in paragraph (1) shall take effect-

(i) from the first day of the pay period immediately following its receipt by the employing authority; or

(ii) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls;

(b) referred to in paragraph (2) shall take effect-

(i) from the first day of the pay period immediately following receipt by the OOH provider; or

(ii) where a date not earlier than the date on which the NHS employment is treated as commencing under regulation A3(7) is specified in the notice, from that date.

(6) Subject to paragraphs (7) and (8), a member who opts out of the scheme will be treated as having left pensionable employment on the day the notice takes effect.

(7) A person

(a) who opts out of the scheme under paragraph (1) before the end of the pay period during which the employing authority included that person in the scheme; or

(b) whose opt out under paragraph (2) takes effect in respect of that period,

shall be treated as never having been included in the scheme.

(8) 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) or paragraph (2) of regulation B5.

(9) 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 accordance with regulation B4(1) 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) Subject to paragraph (3), a person who has previously opted out of the scheme in accordance with regulation B4(2) may, if eligible to do so, join or rejoin the scheme by giving notice in writing to the OOH provider and on doing so shall be included in the scheme on-

(a) the first day of the first pay period after the notice to join or rejoin the scheme is received; or

(b) such other date being-

(i) the first day of a pay period; and

(ii) no earlier than the first day of the pay period immediately following the pay period in which the notice to opt out of the scheme referred to in regulation B4(2) (or the latest of them) took effect in accordance with regulation B4(5),

as is specified in that notice.

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

### **Opting into the scheme: mis-sold pensions**

**B6.**—(1) Subject to paragraph (3), this regulation shall apply to a person who, during any period—

(a) was eligible to be an active member of the scheme;

(b) opted out of the scheme under regulation B4(1) and made contributions to a personal pension scheme; and

- (c) has suffered loss as the result of a contravention which is actionable under section 150 of the Financial Services and Markets Act 2000<sup>(50)</sup>.

(2) Where, at any time, a person to whom this regulation applies elects to rejoin the scheme under regulation B5, there shall, if the Scottish Ministers so determine, be counted as pensionable service in respect of that person a period equal to the aggregate of—

- (a) his or her additional period of pensionable service as approved by the Scottish Ministers for the purposes of regulation N4(2)(a); and
- (b) his or her transferred out service, if any, within the meaning of regulation N4(5)

provided there has been paid to the Scottish Ministers in respect of that person a transfer payment calculated in accordance with regulation N4.

(3) Where, at any time, a person to whom this regulation applies elects to rejoin the scheme under regulation B5 but dies in pensionable employment or becomes entitled to benefits under Part E of these Regulations before the transfer payment referred to in paragraph (2) has been paid to the Scottish Ministers in respect of him or her, paragraph (2) shall continue to apply in the case of that person.

(4) In this regulation—

“active member” means a person who is in pensionable service under the scheme; and

“personal pension scheme” has the meaning given by section 1 of the 1993 Act<sup>(51)</sup> and includes—

- (a) a retirement annuity contract approved under Chapter III of Part XIV of the Taxes Act<sup>(52)</sup> ;
- (b) a personal pension scheme which was approved under Chapter IV of Part XIV of the Taxes Act<sup>(53)</sup>;
- (c) a retirement benefits scheme which was approved under section 591(2)(g) of the Taxes Act<sup>(54)</sup>.

## PART C

### PENSIONABLE PAY, PENSIONABLE SERVICE, QUALIFYING SERVICE AND PART-TIME EMPLOYMENT

#### Meaning of “pensionable pay”

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<sup>(50)</sup> 2000 c.8.

<sup>(51)</sup> Section 239 of the Pensions Act 2004 (c.35) introduced a new definition of “occupational pension scheme” into section 1 of the 1993 Act.

<sup>(52)</sup> Chapter III is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

<sup>(53)</sup> Chapter IV is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

<sup>(54)</sup> Section 591 is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

**C1.**—(1) In these Regulations “pensionable pay” means, subject to the provisions of this regulation-

(a) all salary, wages, fees and other regular payments made to a member in respect of pensionable employment as an officer, but does not include bonuses, payments made to cover expenses or payments for overtime; and

(b) in respect of a non GP provider who, by virtue of regulation R1(3) of these Regulations is treated as an officer, pensionable earnings calculated in accordance with –

(i) paragraph 3 of Schedule 1; or

(ii) where the non GP provider is a practitioner in partnership, paragraph 4 of Schedule 1.

(2) Subject to paragraphs (3) and (5), 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) Subject to paragraph (4), in the case of a member who joined the scheme before 1st June 1989 pensionable pay in excess of the permitted maximum will not be ignored.

(4) In the case of a member who joined the scheme before 1st June 1989 and has a break in pensionable employment on or after that date-

(i) any pensionable pay earned preceding the break in that employment in excess of the permitted maximum will not be ignored;

(ii) any pensionable pay earned after the break in that employment in excess of the permitted maximum will be ignored.

(5) Where a member who was eligible to be a member before 1st June 1989 becomes a member on or after that date by virtue of being a person to whom regulation B6 applies, any amount by which that member’s pensionable pay exceeds the permitted maximum will not be ignored when calculating the amount of any contributions or benefits payable under these Regulations except in relation to a period following a break in pensionable employment on or after that date.

(6) For the purposes of paragraphs (3) and (5) 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 Scottish Ministers;
- (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;
- (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 Part VIII of the Employment Rights Act 1996<sup>(55)</sup> and returns to pensionable employment no later than one month after returning to work; or
- (f) the break is due to the member opting out of the scheme as the result of a contravention which is actionable under section 62 section 150 of the Financial Services and Markets Act 2000 <sup>(56)</sup>.

(7) 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.

(8) In this regulation, "the permitted maximum" means the same as in section 590C of the Taxes Act (earnings cap)<sup>(57)</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>(58)</sup> (reckoning war service as contributing service under the principal regulations);

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<sup>(55)</sup> 1996 c.18. Part VIII (sections 71- 80) of the 1996 Act were substituted by the Employment Relations Act 1999 (c.26), section 7 and Schedule 4, Part I, to which there are amendments not relevant to these Regulations.

<sup>(56)</sup> 2000 c.8.

<sup>(57)</sup> Section 590C was inserted by the Finance Act 1989 (c.26), section 75 and Schedule 6, Part I, is amended by the Finance Act 1993 (c.34), section 107 and is prospectively repealed by the Finance Act 2004 (c.12), Schedule 42, Part 3. See S.I. 2005/720 for the permitted maximum.

<sup>(58)</sup> S.I. 1977/2138; amended by S.I. 1981/1018.

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- (d) any period of additional service which the member has purchased under regulation Q1 (right to buy additional service) or under regulations 27 or 28 of the 1980 Regulations; and
  - (e) any period of pensionable service credited to the member under regulation N1(5) (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–
- (a) any period of employment in respect of which the Secretary of State or the Scottish Ministers have 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 or she 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 or the Scottish Ministers have discharged their liability to provide benefits under regulation E9 (refund of contributions), Part M (transfer-out arrangements and buy-outs) and regulation K8 (state scheme premiums);
  - (f) in the case of practice staff any employment or portion of their employment which does not relate to the provision of services under a GMS contract, a section 17C agreement, an HBPMS contract or to the provision of OOH services.
- (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 Scottish Ministers 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 or a buy-out policy, the period of employment that qualified the member for those rights;
- (c) in the case of a person who—
  - (i) has become a member on the transfer of his or her employment to a new employer as a result of a transfer of an undertaking to that employer, and
  - (ii) has rights under another occupational pension scheme to which he or she was eligible to belong in his or her former employment in respect of which no transfer payment has been accepted under regulations N1(5) or N5,

the period of employment that qualified the member for those rights;

- (d) any period reckonable as "service" under the 1980 Regulations; and
- (e) any period of part-time pensionable service in accordance with regulation C4(11).

(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) Where a member who is employed on a casual basis—

(a) ceases to pay contributions because of a break in his or her pensionable employment of a period not exceeding three months, and

(b) re-enters pensionable employment on the same basis after the break,

for the purposes of these Regulations he or she is treated as continuing to be in qualifying service (but not pensionable service) during the break, and as not being required to rejoin the scheme when he or she re-enters pensionable employment.

(6) 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 (7) and (11), 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:—

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

(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:—

$$\frac{\textit{member's hours of employment each week}}{\textit{hours constituting comparable whole – time employment.}}$$

(4) Subject to paragraph (6), 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 Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment.

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(5) For the purposes of paragraph (4) “a single comparable whole-time employment” means the number of hours, half days or sessions which the Scottish Ministers determine would constitute comparable whole-time employment.

(6) 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(12) (reduction of pension for members who return to pensionable employment after becoming entitled to a pension).

(7) 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)) or a pension under regulation E3 (early retirement pension (redundancy etc.))–

- (a) the member’s pensionable service in part-time employment will count at its full length for the purpose of calculating–
  - (i) whether and (if so) to what extent, the pensionable service upon which the pension under regulation E2 is based should be increased under that regulation, or
  - (ii) the qualifying service for the purposes of regulation E3(1)(a);
- (b) the pension will be based on the whole-time equivalent of the member’s pensionable service in respect of part-time employment and, in the case of a pension under regulation E2, the increase under that regulation 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.

(8) Except as provided for in regulation Q3(4), 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 3 (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 or her contract of employment during the period by reference to which “remuneration” was calculated for the purposes of Table 1 of Schedule 3 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.

(9) 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 3 (whichever is applicable) will be reduced as described in paragraph (8) above.

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

(11) 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 U8 (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 Scottish Ministers not later than the 19th day of the month following the month in which the earnings were paid.

(6) Without prejudice to any other method of recovery, where an employing authority has failed to deduct contributions in accordance with paragraph (5), the Scottish Ministers may recover any sum that remains due in respect of those contributions by deduction from any payment by way of benefits to, or in respect of, the member entitled to them where-

(a) the member agrees to such a deduction; and

- (b) the deduction is to the member's advantage.

### **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 Scottish Ministers specify from time to time and when specifying a rate the Scottish Ministers shall include the cost of providing any increases in pensions which are payable by virtue of Part I of the Pensions (Increase) Act 1971<sup>(59)</sup>

(2) The Scottish Ministers 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 Scottish Ministers 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-paragraphs (a) above for the period referred to in that sub-paragraph;
- (c) the cost of providing compensation under regulations 4(1) (payment of compensation), 8(1) (compensation payable to widow, widower, surviving civil partner or dependants) or 9 (compensation where lump sum on death becomes payable) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003<sup>(60)</sup>;
- (d) the cost of providing any increase under Part I of the Pensions (Increase) Act 1971<sup>(61)</sup> in the rate of the benefits referred to in sub-paragraphs (a) to (c) above which has not been contributed pursuant to paragraph (1) but in the case of 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 Scottish Ministers on the advice of the Government Actuary,

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<sup>(59)</sup> 1971 c.56.

<sup>(60)</sup> S.S.I. 2003/344

<sup>(61)</sup> 1971 c.56.

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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 Scottish Ministers on the same day as the member's contributions under regulation D1(5).

(5) Any additional payments that are due to the Scottish Ministers 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 Scottish Ministers agree, by—

(i) a single payment of an amount determined by the Scottish Ministers, 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

(ii) not more than 5 equal annual instalments each of an amount determined by the Scottish Ministers, 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 Scottish Ministers agree, discharge its liability under paragraph (3) by making—

(a) a single payment of an amount determined by the Scottish Ministers, on the advice of the Government Actuary, made within one month of the date on which the Scottish Ministers' consent is notified to the employing authority, or

(b) not more than 5 equal annual instalments each of an amount determined by the Scottish Ministers, on the advice of the Government Actuary, the first of which to be made within one month of the date on which the Scottish Ministers' 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 Scottish Ministers agree, make payment in accordance with paragraph (6)(a) or (b) in respect of payments under paragraph (3)(c) above.

(8) Where an employing authority which is-

- (a) a GMS practice; or
- (b) a section 17C agreement provider; or
- (c) and HBPMS contractor; or
- (d) an OOH provider,

fails to pay or remit contributions in accordance with the provisions of this regulation, the Scottish Ministers may thereafter require that authority to have in force a guarantee, indemnity or bond in a form and amount, and provided by a person approved by the Scottish Ministers, which provides for payment to the Scottish Ministers of all future liabilities of the employing authority under these Regulations or under the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998<sup>(62)</sup> should that authority fail to meet them.

## 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 or she 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 the member permanently incapable of efficiently discharging the duties of that employment shall be entitled to receive an immediate pension under this regulation if he or she 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.

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<sup>(62)</sup> S.I. 1998/1451, amended by S.S.I. 2001/465, S.I. 2001/3649 and S.S.I. 2004/62

- (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 or she 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 or she 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 or she 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 Scottish Ministers may discharge their 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 Scottish Ministers are 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 Scottish Ministers may require whatever medical evidence that they consider necessary.
- (10) The amount of the lump sum payable under paragraph (7) will be equal to 5 times the difference between the yearly rate of the member's pension calculated in accordance with this regulation and the annual rate of the member's guaranteed minimum pension 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 or she 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 Scottish Ministers are 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 or she 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.

(4) This regulation shall not apply to—

- (a) practice staff;
- (b) a member who is providing piloted services;
- (c) a member to whom regulation R13(1)(a) or (c) of these Regulations applies; or
- (d) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

**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).

(3) This regulation shall not apply to—

- (a) practice staff;

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- (b) a member who is providing piloted services;
- (c) a member to whom regulation R13(1)(a) or (c) of these Regulations applies; or
- (d) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

**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 Scottish Ministers, 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 Scottish Ministers, 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 Scottish Ministers determine, 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—

- (a) where it becomes payable by virtue of paragraph (3)(d) below, in accordance with paragraphs (2) to (4) of regulation E5, as if it were a pension under that regulation; and
- (b) in any other case, as described in regulation E1;

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 Scottish Ministers are 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 Scottish Ministers are 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);
  - (d) the member–
    - (i) left pensionable employment after 30th March 2000;
    - (ii) has reached the age of 50; and
    - (iii) has applied to the Scottish Ministers for payment of the pension and retirement lump sum under this regulation.
- (4) Except in a case to which paragraph (5) applies, if the member is in NHS employment (whether with the same or another employing authority)–
- (a) in the case of a member to whom sub-paragraph (d) of paragraph (3) above applies, when he or she makes the application referred to in head (iii) of that sub-paragraph; or
  - (b) in any other case, when the member reaches the age of 60,
- the pension will not become payable until the member leaves all NHS employment or reaches age 70, whichever is the earlier.
- (5) Paragraph (4) may not apply where the NHS employment which the member is in when he or she reaches age 60 is employment into which he or she has been transferred as a result of a transfer of an undertaking to the employer.
- (6) Where a member receives a pension under paragraph (1) while being in the new employment to which paragraph (5) applies–
- (a) his or her benefits in respect of any pensionable service in that new employment shall be calculated without regard to any pensionable service in any earlier employment; and
  - (b) for the purposes of regulation C2 (meaning of “pensionable service”) and regulation D1(3) and (4) (contributions by members), his or her service in the earlier employment and in the new employment shall be aggregated.

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(7) Subject to paragraph (8), where on or after 1<sup>st</sup> April 1995 a member becomes entitled to a pension under paragraph (3)(a) or (b) of this regulation, the Scottish Ministers may discharge their 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 Scottish Ministers are 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 1<sup>st</sup> April 1995.

(9) For the purposes of paragraph (8), the Scottish Ministers may require whatever medical evidence that they consider necessary.

(10) The amount of the lump sum payable under paragraph (7) will be equal to 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 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 May 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 dependant 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 Scottish Ministers, 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(11) be entitled to receive a refund of his or her 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 Scottish Ministers.

(2) If the member's employment was contracted-out by reference to the scheme, the member (and the member's spouse or civil partner, if any) will remain entitled to a guaranteed minimum pension or to Section 9(2B) rights under the scheme, unless the Scottish Ministers discharge their liability to provide a guaranteed minimum pension by paying a contributions equivalent premium under section 55(2) of the 1993 Act<sup>(63)</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 1993 Act (deduction of contributions equivalent premium from refund of contributions)<sup>(64)</sup>.

(4) If a contributions equivalent premium is not paid, the member's refund of contributions will be reduced by the amount that the Scottish Ministers estimate would have been recoverable under section 61 of the 1993 Act if the premium had been paid.

(5) Where a member does not apply for a refund of contributions under paragraph (1) the Scottish Ministers 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 Scottish Ministers have received a transfer payment in respect of his or her rights under a personal pension scheme.

(7) Where a refund of contributions is made, the Scottish Ministers shall be discharged from any obligations to provide benefits under the scheme except to any extent provided for under paragraph (2).

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

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<sup>(63)</sup> Section 55(2) was amended by the 1995 Act, section 151 and Schedule 5 and the 1999 Act, sections 18 and 88 and Schedules 2 and 13..

<sup>(64)</sup> Section 61 was amended by the 1995 Act, Schedule 5, the Child Support, Pensions and Social Security Act 2000 (c.19), Schedule 5 and the Pensions Act 2004 (c.35), Schedule 12.

**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) Except where a lump sum payment is made under regulation E2(7), 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 the member had become entitled to it immediately before his or her 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 the member had become entitled to receive that pension immediately before his or her death.

**Payment of lump sum**

**F5.**—(1) A lump sum under any of regulations F1 to F4 shall be paid in accordance with the following paragraphs.

(2) Unless paragraph (3) or (4) below applies, the lump sum shall be paid to the member's personal representative.

(3) Where the member dies and leaves a widow, widower or surviving civil partner, the lump sum may be paid to the widow, widower or surviving civil partner, unless—

- (a) the member has given notice in writing to the Scottish Ministers that the widow, widower or surviving civil partner is not to receive the payment, and has not revoked that notice;
- (b) the widow, widower or surviving civil partner has been convicted of an offence specified in regulation U6(2) and the Scottish Ministers have directed, as a consequence of that conviction, that the widow's, widower's and surviving civil partner's right to a payment in respect of the member's death shall be forfeited; or
- (c) paragraph (4) below applies.

(4) Where the member has given notice in writing to the Scottish Ministers that the lump sum is to be paid to a person specified in the notice, and has not revoked that notice, the lump sum may be paid to that person unless—

- (a) that person has died before the payment can be made; or
- (b) that person has been convicted of an offence specified in regulation U6(2) and the Scottish Ministers have directed, as a consequence of that conviction, that that person's right to a payment in respect of the member's death shall be forfeited; or

- (c) payment to that person is not, in the opinion of the Scottish Ministers, reasonably practicable.
- (5) Notice given to the Scottish Ministers for the purposes of paragraph (3) or (4) may, at any time, be revoked in writing.
- (6) A notice given for the purpose of paragraph (4) above shall only be given by a member who is in pensionable service in the scheme and shall specify one person, who may be—
  - (a) an individual;
  - (b) a body corporate; or
  - (c) an unincorporated body.
- (7) If the lump sum on death does not exceed the specified amount as defined in paragraph (8), the Scottish Ministers 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.
- (8) In paragraph (7), 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<sup>(65)</sup> as the amount to be treated as substituted for references to £500 in section 1 of that Act.

## PART G

### WIDOWS, WIDOWERS AND SURVIVING CIVIL PARTNERS

#### **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 regulation G2 to G6 applies.

- (2) Subject to paragraphs (5) to (7)—
  - (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) Subject to paragraphs (5) to (7) –

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<sup>(65)</sup> 1965 c.32; the amount specified in S.I. 1984/539 is £5,000.

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- (a) no widow's pension shall be payable in respect of any period during which the widow and a woman who is not her civil partner are living together as if they were civil partners; and
  - (b) the widow shall cease to be entitled to a widow's pension if she forms a civil partnership.
- (4) Paragraph (3) shall not apply where the member dies before 5th December 2005.
- (5) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.
- (6) Nothing in paragraphs (2) or (3) shall affect any entitlement to a widow's guaranteed minimum pension under the scheme.
- (7) The Scottish Ministers may pay a pension to a widow who has remarried or formed a civil partnership, or who is living as husband and wife with a man to whom she is not married, or is living together with a woman as if they were civil partners, if they are satisfied that the widow will otherwise suffer severe financial hardship.
- (8) The Scottish Ministers may pay a pension to a widow who has remarried or has formed a civil partnership if the later marriage or civil partnership comes to an end and they are satisfied that the widow will otherwise suffer hardship.
- (9) The amount of any pension payable under paragraph (7) or (8) may, at the Scottish Ministers' discretion, be equal to, or less than, the original widow's pension and the Scottish Ministers may (subject to any widow's guaranteed minimum pension) vary the amount, or stop paying the pension, at any time.
- (10) If a dependant 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 dependant 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 Scottish Ministers discharge their liability to provide this pension by paying a contributions equivalent premium under section 55(2) of the 1993 Act<sup>(66)</sup>.

### **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 dependant 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 a 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.

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<sup>(66)</sup> Section 55(2) was amended by the 1995 Act, section 151 and Schedule 5 and the 1999 Act, sections 18 and 88 and Schedules 2 and 13

(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 become 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 Scottish Ministers discharge their liability to provide this pension by paying a contributions equivalent premium under section 55(2) of the 1993 Act.

**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 dependant 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 regulation 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).

### **Dependant widower's pension**

**G8.**—(1) A female member may, by giving notice in writing to the Scottish Ministers, nominate her husband to receive a dependant 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 Scottish Ministers before leaving pensionable employment or, if earlier, reaching age 70.

(2) The Scottish Ministers shall accept the member's nomination only if they are 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 Scottish Ministers have accepted the member's nomination and the member subsequently dies before her husband, the dependant widower shall be entitled to a dependant widower's pension.

(4) The dependant widower's pension will be calculated in the same way as a widow's pension under regulation 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 Scottish Ministers accept a member's nomination for a dependant 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>(67)</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.

### **Surviving civil partner's pension**

**G10.**—(1) Subject to the following provisions of this regulation, if a member who is in a civil partnership dies in the circumstances described in any of regulations G2 to G6 and leaves a surviving civil partner, the surviving civil partner shall be entitled to a pension as described in this regulation.

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

(3) When calculating a surviving civil partner's pension, any part of the 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 surviving civil partner's pension on a member's death in pensionable employment or with a preserved pension—

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

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<sup>(67)</sup> Regulation 20(2) was inserted into the 1980 Regulations by regulation 13 of S.I. 1989/1749.

(5) Where regulation G3(2) applies to the calculation of the surviving civil partner's pension, so that the surviving civil partner's pension is equal to the member's pension for a limited period, the surviving civil partner'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 member who has formed a civil partnership, those regulations as applicable to the member's surviving civil partner (if any).

(7) For the purposes of this regulation, two people of the same sex are to be regarded as living together as if they were civil partners if they would be regarded as living together as husband and wife if they were not of the same sex.

### **Dependant surviving civil partner's pension**

**G11.**—(1) A member who has formed a civil partnership may, by giving notice in writing to the Scottish Ministers prior to leaving pensionable employment, nominate the other party to the civil partnership to receive a dependant surviving civil partner's pension on the member's death.

(2) The Scottish Ministers shall accept a member's nomination only if they are satisfied that the member's civil partner 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 Scottish Ministers have accepted a member's nomination and the member subsequently dies before the other party to the civil partnership, the dependant surviving civil partner shall be entitled to a dependant surviving civil partner's pension.

(4) The dependant surviving civil partner's pension shall be calculated in the same way as a widow's pension under regulations G1 to G6, but based only on the member's pensionable service before 6th April 1988.

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

(6) Where regulation E2(10) or regulation E6(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member to whom paragraph (5) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

### **Purchase of surviving civil partner's pension in respect of service prior to 6<sup>th</sup> April 1988**

**G12.**—(1) Subject to the following provisions of this regulation an officer or a practitioner, unless he is a person in respect of whom a pension has already become payable under regulation E2 (Early retirement provision (ill health)) and to whom E2(11) applies, may, in respect of the whole or any part of his contributing service prior to 6<sup>th</sup> April 1988, elect to purchase an increase in the amount of any surviving civil partner's pension which may become payable by virtue of regulation G10 (Surviving civil partner's pension).

(2) The purchase of an increase pursuant to paragraph (1) may be made only in respect of complete years of service unless the officer or practitioner wishes to purchase an increase in respect of all of his service before 6<sup>th</sup> April 1988 or all of his service in respect of the period beginning on 25<sup>th</sup> March 1972 and ending on 5<sup>th</sup> April 1988 in which case the whole of the requisite period may be purchased whether or not it constitutes a multiple of complete years of service.

(3) An election pursuant to paragraph (1)—

- (a) shall not be made later than 28<sup>th</sup> February 2007;
- (b) shall be made by giving notice in writing to the Scottish Ministers specifying the period in respect of which the election is made;
- (c) must be accompanied by a declaration in writing signed by the member that he is of sound health for his age; and
- (d) shall be irrevocable.

(4) Schedule 3, table 2 shall have effect with regard to the cost of providing the increase provided pursuant to paragraph (1).

### **Increased surviving civil partner's pension**

**G13.**—(1) If a member, who has formed a civil partnership, elects on or before 28<sup>th</sup> February 2007 to buy an increased surviving civil partner's pension pursuant to regulation G12(1), the surviving civil partner's pension described in regulation G10 (Surviving civil partner's pension) will be based on pensionable service after 5<sup>th</sup> April 1988 plus the period of pensionable service before that date that the member elected to buy for this purpose under regulation G12(1).

(2) Subject to paragraph (3) any retirement lump sum payable to a member under regulation E6 (lump sum on retirement), in respect of any period of pensionable service that the member elected to buy as described in paragraph (1), will be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily portion of that rate for each additional day (except to the extent that any lump sum reduction has been set off under regulation Q2 (right to buy an unreduced retirement lump sum)).

(3) Where regulation E2(10) or regulation E6(8) applies to a member who has formed a civil partnership, any reference in those regulations to a lump sum payable on retirement shall mean, in relation to a member whom paragraph (2) of this regulation refers, a lump sum which is not reduced as described in that paragraph.

(4) Subject to paragraph (5), where by virtue of an election under regulation G12(1), the amount of the retirement lump sum would fall to be reduced by 1.4 times the yearly rate of the member's pension plus the relevant daily proportion of that rate for each additional day, the member may, prior to 28<sup>th</sup> February 2007, make an election to purchase an unreduced lump sum under regulation Q2 (right to buy an unreduced retirement lump sum).

(5) A member who has purchased additional service in accordance with regulation Q1 (right to buy additional service) by way of a payment under regulation Q6 (paying for additional service or an unreduced retirement lump sum by regular additional contributions) may not make an election under paragraph (4) in respect of the purchase of an unreduced lump sum.

## PART H

### DEPENDANT CHILD ALLOWANCE

#### **Dependant 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 or a civil partnership formed 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 or civil partner (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
- (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 dependant child for so long as he or she 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 or she 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 Scottish Ministers are 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>(68)</sup>.

(4) A child who is age 17 or over and who has ceased to be a dependant child will be treated as a dependant child if or she returns to full-time education, or to full-time training for a trade, profession or vocation for which he or she is not receiving remuneration in excess of the allowable maximum, before reaching age 21 and within 12 months after ceasing to be a dependant 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>(69)</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 or she was suffering at the time the member died, or from which he or she started to suffer while qualifying as a dependant child as described in paragraph (3) will be treated as a dependant child for so long as he or she remains incapable of earning a living.

### **Payment of dependant 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 dependant child, the dependant child shall be entitled to a child’s allowance as described in this regulation and regulations H3 to H7.

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<sup>(68)</sup> 1992 c.4. Section 124 was amended by the 1995 Act, Schedules 2 and 3, the 1999 Act, section 70 and Schedule 8, the State Pension Credit Act 2002 (c.16), Schedules 2 and 3 and the Civil Partnership Act 2004 (c.33), Schedule 24.

<sup>(69)</sup> 1971 c.56

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(2) If a dependant 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 Scottish Ministers so decide, to some other person for the child's benefit. If there is more than one dependant child, the Scottish Ministers will divide the allowance between them in such shares as they decide from time to time.

(4) Where a child is a dependant 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 Scottish Ministers are satisfied that the child intended to do so from the start of the break.

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

(6) Where a child is a dependant 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 dependant 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 U8(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 or she 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 or she had stayed in pensionable employment until age 65.

(4) Subject to paragraphs (5) to (8) and regulation H7 if the member dies leaving a dependant child and there is a surviving parent (or spouse or civil partner of a parent), the allowance will be equal to one-quarter of the pension described in paragraph (2) if there is only one dependant child, and one-half if there are two or more.

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

(6) If a widow's, widower's or surviving civil partner's pension is payable at the rate mentioned in regulation G2(2), but there is a dependant child who is not dependent on that widow, widower or surviving civil partner, 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 or she died.

(7) If the member dies leaving a dependant child and there is no surviving parent (or spouse or civil partner of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependant 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 or she died.

(8) If the member dies leaving a dependant child and there is a surviving parent (or spouse or civil partner of a parent) but there is no entitlement to a widow's, widower's or surviving civil partner'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 or she had stayed in pensionable employment until age 65.

(3) If the member dies leaving a dependant child and there is a surviving parent (or spouse or civil partner 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 dependant child, and one-half if there are two or more.

(4) If the member dies leaving a dependant child and there is no surviving parent (or spouse or civil partner of a parent), the allowance will be equal to one-third of the pension described in paragraph (2) if there is only one dependant 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 dependant child and there is a surviving parent (or spouse or civil partner of a parent) but there is no entitlement to a widow's, widower's or surviving civil partner'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, widower's or surviving civil partner's pension is payable at the rate mentioned in regulation G3(2), no allowance shall be payable in respect of any dependant child who is dependent on the widow, widower or surviving civil partner until the end of the first six months after the member's death.

(7) If a widow's, widower's or surviving civil partner's pension is payable at the rate mentioned in regulation G3(2) but there is a dependant child who is not dependent on that widow, widower or surviving civil partner, 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 or she 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 or she had stayed in pensionable employment until age 65.

(4) If the member dies leaving a dependant child and there is a surviving parent (or spouse or civil partner of the 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 dependant child, and one-half if there are two or more.

(5) If the member dies leaving a dependant child and there is no surviving parent (or spouse or civil partner of the 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 dependant child, and two-thirds if there are two or more.

(6) If the member dies leaving a dependant child and there is a surviving parent (or spouse or civil partner of the parent) but there is no entitlement to a widow's, widower's or surviving civil partner'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 dependant 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 or civil partner of a parent**

**H7.**—(1) If a member dies leaving a dependant child and there is a surviving parent (or spouse or civil partner of the parent) and at least one dependant child who is not being maintained by the surviving parent (or spouse or civil partner of the parent), the Scottish Ministers may increase the amount of the child allowance that would otherwise be payable under these Regulations.

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

### **PART J**

#### **ALLOCATION TO A SPOUSE A CIVIL PARTNER OR DEPENDANT**

##### **Allocation of pension by member for benefit of dependant**

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

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

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- (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 or her pension under this regulation may elect to do so—
- (a) on, or with 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 or her 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 Scottish Ministers 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 or her pension to provide a pension on his or her death for a surviving spouse, a civil partner or a dependant 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, civil partner's pension or dependant's pension under regulation J1 than the pension he or she 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, civil partner or dependant of at least £260 a year or, if greater, of the minimum amount that cannot be treated as trivial for the purposes of regulation U7 (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 Scottish Ministers.
- (2) The allocation will not take effect if—
- (a) the member dies on or before the day on which the Scottish Ministers accept the member's election;
  - (b) the dependant, spouse or civil partner dies before the member is told that the Scottish Ministers accept the election; or

- (c) the member withdraws his or her application before it is accepted by the Scottish Ministers .

(3) An allocation may not be withdrawn or cancelled, once the Scottish Ministers have accepted the member's election to allocate.

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

**J4.**—(1) If a member elects to allocate part of his or her 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 12, as entitled to the pension he or she would have received if he or she had retired immediately before his or her death.

(2) If a member allocates part of his or her 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 or her pension.

### PART K

#### CONTRACTING OUT GUARANTEED MINIMUM PENSIONS AND SECTION 9(2B) RIGHTS

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

**K1.** The scheme will be administered in conformity with the contracting-out requirements and regulations K2 to K8 will override any inconsistent provisions of these Regulations except regulation U7 (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 1993 Act<sup>(70)</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 Scottish Ministers 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);

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<sup>(70)</sup> Section 14 was amended by the 1995 Act, Schedules 5 and .7, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c.2) Schedule 1 and the Proceeds of Crime Act 2002 (c.29), Schedule 11.

- (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);
  - (c) payment may be reduced or suspended where the Scottish Ministers have made a direction under regulation U6 (loss of rights to benefit) or where they have discharged their liability by making a payment under regulation U7 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 1993 Act.
- (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 1993 Act.
- (5) If the member is in a civil partnership and dies leaving a surviving civil partner, the weekly rate of the surviving civil partner's pension will not be less than one-half of the part of the member's guaranteed minimum that is attributable to earnings for the tax year 1988 – 1989 and subsequent tax years for any period mentioned in section 17(6) of the 1993 Act.
- (6) The part of any guaranteed minimum pension that is attributable to earnings for the tax year 1988-89 and subsequent tax years ending with the tax year 1996-97, will increase in each year by the percentage specified in any order made by the Secretary of State under section 109 of the 1993 Act (annual increases of guaranteed minimum pensions)<sup>(71)</sup>.
- (7) 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, widower's or surviving civil partner's pension of the amount described in paragraph (3) or (4) as the case may be.
- (8) Where paragraph (3) of regulation K8 applies, a guaranteed minimum pension of the amount described in paragraph (4) will be payable.
- (9) Where the member has Section 9(2B) rights in relation to the pension provided for the member under the scheme, these rights will be increased by the percentage specified in any order made by the Secretary of State under sections 59 and 59A of the Social Security Pension Act 1975 <sup>(72)</sup> and section 151 of the Social Security Administration Act 1992 <sup>(73)</sup>.

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<sup>(71)</sup> Section 109 was amended by the 1995 Act, section 55.

<sup>(72)</sup> 1975 c.60. Section 59A was inserted by the Social Security Act 1979 (c. 18), section 11(4).

<sup>(73)</sup> 1992 c.5. Section 151 was amended by the 1995 Act, section 130.

### **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 1993 Act (annual increases of guaranteed minimum pensions) will be increased by 1/7th per cent for each complete 7 days of postponement.

### **Early leavers**

**K4.—**(1) Subject to paragraph (2), if a member leaves contracted-out employment under the scheme before state pension age, the member's guaranteed minimum pension at the date of leaving will be increased when the member reaches state pension age or dies (if earlier) by the appropriate percentage specified in relation to each relevant year in the last order under section 148 of the Social Security Administration Act 1992<sup>(74)</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). A member's Section 9(2B) rights will be increased in accordance with any order under section 151 of the Social Security Administration Act 1992.

(2) If a guaranteed minimum pension or Section 9(2B) rights are 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 Scottish Ministers 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 the 1993 Act, 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.

### **Residual liability for guaranteed minimum pensions and for section 9(2B) rights**

**K5.-** (1) This regulation applies where—

- (a) a member has exercised his or her right to a cash equivalent:
- (b) the other occupational pension scheme or personal pension scheme into which the cash equivalent has been transferred to or is in the course of being transferred to is not willing or is unable to accept the cash equivalent of the member's guaranteed minimum pension or section 9(2B) rights; and

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<sup>(74)</sup> 1992 c.5; section 148 was amended by the 1993 Act, Schedule 8, the 1995 Act, section 128 and the Child Support, Pensions and Social Security Act 2000 (c.19), sections 33 and 37.

- (c) the member has not transferred the cash equivalent of the guaranteed minimum pension or section 9(2B) rights into a policy as described in section 19(4)(a)<sup>(75)</sup> of the 1993 Act or a separate personal pension scheme.
- (2) Where this regulation applies, the member is entitled-
- (a) to a pension at a weekly rate equal to the guaranteed minimum from the date on which the member attains state pension age; or
  - (b) to a lump sum and pension in respect of his or her section 9(2B) rights from the date on which the member attains the age of 60,
- or to both.

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

**K6.**—(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**

**K7.**—(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 or Section 9(2B) rights equal to those to which the member and the member's spouse or civil partner would have been treated as entitled under the transferring scheme had the transfer not been made.

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<sup>(75)</sup> Section 19(4)(a) is amended by S.I. 2001/3649, Article 116.

(2) Any guaranteed minimum pensions to which a member and his or her spouse or civil partner are entitled by virtue of paragraph (1) will be revalued as described in regulation K6(2) (transferred guaranteed minimum pensions).

### **State scheme premiums**

**K8.**—(1) The Scottish Ministers may discharge their liability to provide guaranteed minimum pensions or Section 9(2B) rights by paying a state pension scheme premium under Chapter III of Part III of the 1993 Act.

(2) Where a member, or a member's widow, widower or surviving civil partner, 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 1993 Act<sup>76</sup> 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, widower or surviving civil partner, as the case may be, if the contributions equivalent premium had not been paid.

## **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

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<sup>(76)</sup> Section 55(2) was amended by the 1995 Act, section 151 and Schedule 5 and the 1999 Act, sections 18 and 88 and Schedules 2 and 13.

- (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 increased as described in paragraphs (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 Scottish Ministers 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 shall be calculated—

- (a) separately; and
- (b) by reference to—
  - (i) the member's pensionable service before and after a break in pensionable employment as the case may be; and
  - (ii) the member's final pensionable pay in respect of that particular period, as if that period had been the member's only period of pensionable employment.

### **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 regulations 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 or she 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 may require the Scottish Ministers to transfer or buy-out his or her rights under the scheme as described in this regulation.

(2) Paragraph (1) only applies if the member—

- (a) leaves pensionable employment with a preserved pension before reaching age 60, or age 59 where paragraph (4)(b) applies; or
- (b) leaves pensionable employment on the transfer of his or her employment to a new employer as a result of a transfer of an undertaking to that employer.

(3) Subject to paragraphs (4) and (5), the right referred to in paragraph (1) is a right to require the Scottish Ministers 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, that satisfies the requirements of the transfer values laws; or
- (c) in any combination of the ways described in sub-paragraph (a) and (b),

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

(4) A member may require the Scottish Ministers 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 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.

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

(6) 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 or her 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 or she actually leaves NHS employment before reaching age 60.

(7) Subject to paragraph (8) 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.

(8) 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 Scottish Ministers 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.

(9) Where the Scottish Ministers has done what is needed to carry out what the member requires under this regulation, the Scottish Ministers will be discharged from any obligation to provide benefits for or in respect of the member under the scheme, except that the Scottish Ministers will continue to be liable to provide guaranteed minimum pension and/or Section 9(2B) rights in respect of the member where regulation M3(2) applies unless the Scottish Ministers discharges that liability under regulation K8 (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 Scottish Ministers.

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

- (3) Subject to paragraph (4), a member who requires all or part of the cash equivalent to be used to purchase one or more buy-out policies may exercise the right at any time before reaching age 59.
- (4) A member who leaves pensionable employment less than six months before his or her 59th birthday may exercise the right under paragraph (3) at any time up to six months after leaving.
- (5) Paragraphs (2) or (3) of this Regulation do not apply if the member exercises the right to require a transfer or buy-out on the transfer of his or her employment to a new employer as a result of a transfer of an undertaking to that employer.
- (6) Subject to paragraph (7), a member may withdraw the application by giving notice in writing to the Scottish Ministers that he or she no longer wishes to exercise that right.
- (7) The member may not withdraw the application after the Scottish Ministers, 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(3).
- (8) 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>(77)</sup>, calculated and verified as required by Chapter IV of Part IV of the 1993 Act<sup>(78)</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 1993 Act, or under a personal pension scheme 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 and/or Section 9(2B) rights, the cash equivalent will be reduced by an amount sufficient for the Scottish Ministers to meet their liability to provide guaranteed minimum pensions and/or Section 9(2B) rights in respect of the member and the Scottish Ministers may discharge that liability by payment of a state scheme premium under regulation K8.

(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 Scottish Ministers fail, 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—

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<sup>(77)</sup> 1971 c.56.

<sup>(78)</sup> To which there are amendments [ ].

- (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>(79)</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 Scottish Ministers carry 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 Scottish Ministers carry out what the member requires.
- (5) Subject to paragraph (7) except in the case of a transfer payment accepted under regulation N4, 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 they are required to make a transfer payment under these Regulations the Scottish Ministers have directed, under regulation U6 (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 Scottish Ministers 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.

(2) Where regulation M2(3) applies, if the member leaves pensionable employment within six months before reaching age 59 and the Scottish Ministers receive the member's application after the member reaches age 59 but within six months after the member's leaving, the Scottish Ministers 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.

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<sup>(79)</sup> 1838 c.10 (1&2. Vict.). Section 17 was amended by the Civil Procedure Acts Repeal Act 1879 (c.59), Schedule, Part I and Civil Procedure (Modification of Enactments) Order 1998 (S.I. 1998/2940), Article 3; the rate of interest was amended by S.I. 1971/491, 1977/141, 1979/1382, 1980/672, 1980/696 and 1427 1985/437 and S.I. 1993/564.

(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 Scottish Ministers that the proceedings may lead to all or part of the member's benefits being forfeited under regulation U6 (loss of rights to benefits), the Scottish Ministers 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 Scottish Ministers 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 or she had left pensionable employment or opted out of the scheme with a preserved pension, except that—

- (a) sub-paragraph (3)(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 person pension scheme, must join that other scheme within 12 months after leaving pensionable employment and exercise the right to transfer within 12 months after joining that other scheme.

(4) A member who pays an amount to the Scottish Ministers as described in paragraph (2) of this regulation will be treated, for the purposes of regulation M1(7), as if the benefits represented by that amount had never become payable to the member.

### **Special terms for transfers out (bulk transfers etc.)**

**M6.**—(1) If one or more members (“the transferring members”)—

- (a) leave pensionable employment,
- (b) join another occupational pension scheme, and
- (c) exercise a right to transfer to that scheme under regulation M1 (member's right to transfer or buy-out),

the Scottish Ministers may, after taking advice from the Government Actuary, make a single transfer payment to that scheme in respect of the transferring members.

(2) The Scottish Ministers shall calculate the amount of any transfer payment paid 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 Scottish Ministers to accept a transfer payment in respect of the member's rights under another occupational pension scheme, a personal pension scheme or a buy-out policy, but not in respect of rights under a scheme that is approved by the Commissioners of Inland Revenue by virtue of section 591(2)(h) of the Taxes Act (freestanding AVC schemes)<sup>80</sup>.

- (2) The Scottish Ministers 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 Scottish Ministers reasonably require; and
  - (b) the amount of the transfer payment is not less than the yearly rate of the guaranteed minimum pension for which the Scottish Ministers would be liable as a result of accepting the transfer payment, multiplied by the factor appropriate to the member's age, as set out in the following table:-

<i>Member's age</i>	<i>Appropriate factor</i>
29 or under	8
30-39	9
40-49	10
50 or over	12

- (3) Except in the case of a person to whom regulation B6 applies, the Scottish Ministers shall not accept a transfer payment if—
- (a) except where paragraph (4) applies the member joins the scheme, or requests the Scottish Ministers to accept the transfer payment, after reaching age 60; or
  - (b) the request is made following a notice given under regulation B5 (rejoining the scheme) in circumstances where the member had a previous opportunity to request the Scottish Ministers to accept a transfer payment in respect of those same rights but did not take that opportunity.

<sup>80</sup> Section 591 is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

(4) This paragraph applies where the member's employment is transferred to an employing authority as a result of a transfer of an undertaking to that employing authority.

(5) If the Secretary 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), N3 (transfers that are not made under the Public Sector Transfer Arrangements) and N4 (transfers in respect of members to whom regulation B6 applies who elect to rejoin the scheme) is applicable.

(6) 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 Scottish Ministers 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 Scottish Ministers 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 Scottish Ministers to calculate cash equivalents under regulations 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 members to whom regulation B6 applies who elect to rejoin the scheme**

**N4.**—(1) In the case of a member to whom regulation B6 applies, this regulation shall apply for the purpose of calculating the amount of the transfer payment by reference to which an additional period of pensionable service may be credited by the Scottish Ministers to that member.

(2) Subject to paragraphs (3) and (4), the transfer payment in respect of which an additional period of pensionable service may be credited by the Scottish Ministers to a member referred to in paragraph (1) shall be calculated in a manner that is consistent with the actuarial methods and assumptions used by the Scottish Ministers to calculate cash equivalents under regulation M3 (amount of members cash equivalent) in the case of transfers that are not made under the Public Sector Transfer Arrangements and shall be of an amount equal to the total amount of—

- (a) an amount which would enable the member to be credited by the scheme with such additional period of pensionable service as the Scottish Ministers may approve in respect of the period during which the member made contributions to a personal pension scheme (“the relevant scheme”);
- (b) the amount of the cash equivalent, if any, which the member transferred to the relevant scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out) (“the transferred rights”); and
- (c) an amount, to be determined from time to time by the Government Actuary, which represents the income which would have been received on the amount referred to in sub-paragraph (b) had that amount been invested during the period commencing at the end of the month in which it was paid by the scheme to the relevant scheme and ending at the end of the month in which the transfer payment was paid to the scheme by the relevant scheme.

(3) The amount, if any, payable by virtue of paragraphs 2(b) and (c) shall be at least equal to the amount of the cash equivalent transfer value which would be payable by the scheme in respect of the transferred-out service if the scheme were to pay a cash equivalent transfer value in respect of that service immediately after the time at which the transfer payment is paid to the scheme by the relevant scheme.

(4) In the case of a member to whom regulation B6 applies who has been credited with an additional period of pensionable service calculated as specified in regulation N3 (transfers that are not made under the Public Sector Transfer Arrangements), the Scottish Ministers may adjust the amount of the transfer payment referred to in paragraph (2) on account of the payment by reference to which that pensionable service was credited.

(5) In this regulation—

“personal pension scheme” has the same meaning as in regulation B6;

“transfer payment” means the payment payable to the scheme by the relevant scheme in respect of a member to whom regulation B6 applies who elects to join or rejoin the scheme; and

“transferred-out service” means the period of pensionable service which the member transferred-out of the scheme by exercising a right under regulation M2 (exercising a right to transfer or buy-out).

### **Special terms for transfers in (bulk transfers etc.)**

**N5.**—(1) This regulation applies where one or more members of another occupational pension scheme (“the transferring members”)—

- (a) cease to be in pensionable employment under that scheme,
- (b) join this scheme, and
- (c) consent in writing to a transfer payment being accepted in respect of them and pensionable service being credited to them as mentioned in paragraphs (2) and (3).

(2) The Scottish Ministers may, after taking advice from the Government Actuary, accept a single transfer payment in respect of the transferring members.

(3) Where such a transfer payment is accepted, each of the transferring members shall be credited with such additional period of pensionable service as the Scottish Ministers determine to be appropriate after taking advice from the Government Actuary.

### **Waiver of transfer payments**

**N6.**—(1) The Scottish Ministers may waive payment of any transfer payment.

(2) If the Scottish Ministers waive payment of any transfer payment, regulations N1 to N5 will apply as if the transfer payment had been accepted.

## **PART P**

### **ABSENCE FROM WORK**

#### **Maternity, paternity and adoption absence**

**P1.**—(1) A period of absence for pregnancy or confinement, or for paternity or adoption leave 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, or for paternity or adoption leave, 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, paternity or adoption leave under the member's 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 stated.

(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 or for paternity or adoption leave 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 or she 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 or she 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 or her earnings were suspended, unless the member has exercised the right to require a transfer or but-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 stated.

(3) A member who is absent from work without leave and whose earnings are suspended will be treated as if he or she 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

RIGHTS TO BUY ADDITIONAL SERVICE AND UNREDUCED LUMP SUM

**Right to buy additional service**

**Q1.**—(1) 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 or her rights to benefits by buying additional pensionable service in accordance with the regulations in this Part.

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

(3) A member must exercise his or her 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 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 (ill-health)); 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) For the purposes of regulation G10 (surviving civil partner’s pension) if a civil partner exercised his or her right to buy additional service before 6<sup>th</sup> April 1988, the additional service bought as a result of the exercise of that right will be treated as service before 6<sup>th</sup> April 1988.

(7) Subject to paragraph (9) 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 or she stayed in pensionable employment until age 60 or, in the case of a special class officer, age 55. A member who will not be able to complete at least 9 years’ pensionable service period prior to reaching age 60 or, in the case of a special class officer, age 55 may not buy any additional service:–

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

(8) Paragraph (7) shall cease to apply to a member who–

- (a) joined the scheme on or after 17th March 1987;
- (b) makes an application on or after 1st September 1997 to buy additional service; and
- (c) commences payments under regulation Q5 on or after 1st September 1997.

(9) The member’s right to buy additional service is subject to any limits imposed by HM Revenue and Customs.

(10) 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.

(11) Where a member, following a break in pensionable employment in respect of which he or she received a refund of contributions which has not been repaid, rejoins the scheme, he or she 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 stated before 25th March 1972 and who is, or has been, married or in a civil partnership 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.

### **Payment 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 he or she again becomes a member

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- (a) having become entitled, in respect of earlier pensionable service, to a pension under regulation E6 (preserved pension) which has not become payable; or
- (b) having, in respect of earlier pensionable service, received a refund of contributions which has not been repaid; or
- (c) 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 or she 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 3.

(4) For the purposes of Table 1 of Schedule 3, “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. Where a part-time member elects to purchase additional pensionable service under regulation Q1(11) and that service was whole-time, the member may purchase whole-time years of service and in that case the yearly average will be the yearly average in respect of comparable whole-time pensionable employment.

(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(11), 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 dependant widower’s pension under regulation G8 (dependant widower’s pension).

(3) A member who has formed a civil partnership who wishes to pay for an unreduced lump sum by a single payment must elect to do so within 12 months after nominating his or her civil partner to receive a dependant surviving civil partner’s pension under regulation G11 (dependant surviving civil partner’s pension).

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

(5) For the purposes of Table 2 of Schedule 3, “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 3).

(6) In the case of a member who elects to buy an unreduced retirement lump sum but who is no longer required to contribute under regulation D1 (contributions by members) because regulation D1(3) or (4) applies, “remuneration” means the amount to which a pension equal to the member’s final year’s pensionable pay and beginning on the day on which regulation D1(3) or (4) started to apply would have been increased under Part I of the Pensions (Increase) Act 1971<sup>(81)</sup> at the date on which the member elects to buy an unreduced retirement lump sum.

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<sup>(81)</sup> 1971 c.56.

(7) 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 Scottish Ministers, 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 members' next birthday following the date on which the member elects to buy the additional service or unreduced retirement lump sum until either the member's 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 3, (if the member is buying additional service) or Table 4 of Schedule 3 (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 HM Revenue and Customs.

(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(11), 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 Scottish Ministers 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 or her 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 Scottish Ministers receive 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 or illness or injury will not be treated as if he or she 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 the member knows of no reason why his or her health should prevent him or her from paying the additional contributions for the whole period for which he or she has chosen to pay them.

(7) Where payment in accordance with regulation Q5(5) is causing, or continuation would cause, financial hardship the Scottish Ministers 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 date 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 or she 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—

*period for which contributions were paid*  

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*period for which contributions should have been paid.*

(6) If the member other than a member to whom paragraph (3) applies does 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 GP registrars as if they were whole-time officers employed by the relevant Health Board.

(3) These Regulations apply from 1<sup>st</sup> April 2004 to a non GP provider as if they were whole-time officers employed by the relevant Health Board.

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

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

(a) who, at 1<sup>st</sup> April 1995—

(i) was 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 1<sup>st</sup> April 1995.

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- (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 pensions) 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 or she 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 1<sup>st</sup> April 1995—

- (a) was in pensionable employment under the scheme as a mental health officer,  
or

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- (b) has accrued rights to benefits under the scheme arising out of a previous period in which he or she was engaged in such employment and at no time since the last occasion on which he or she was so engaged has 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 Regulation R2(1) & R2(2).
- (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 or she 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 or she became a mental health officer in which he or she 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 or she devoted the whole or substantially the whole of his or her 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).

(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 or she stayed in NHS employment until a particular age;
- (b) for the purpose of calculating a minimum widow's, widower's or surviving civil partner'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) or under regulation G11(4) (dependant surviving civil partner'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–

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

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 or she 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 or she 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 the member had left pensionable employment on the day he or she 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 or she 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 the member may elect to make those contributions from his or her next birthday following the date on which he or she 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 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 or her time to the treatment or care of people suffering from mental disorder; and
- (b) any other officer employed in such a hospital who is within a class or description of officers designated by the Scottish Ministers as mental health officers for this purpose.

(17) Where a part-time member is treated as a mental health officer 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 NHS employment—

- (a) with more than one employing authority;
- (b) who hold, under one employing authority, two or more separate employments;  
or
- (c) to whom paragraph (9) below applies.

(2) A member may contribute to the scheme in respect of all or any of his or her 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) Subject to paragraph (9), 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 who becomes entitled to a pension under regulation E3 in respect of his or her employment as an officer and has terminated concurrent employment as a practitioner not more than 12 months before the date on which he or she becomes entitled to that pension shall not be entitled to receive a pension under that regulation in respect of any employment as a practitioner, but shall be entitled to receive only a pension under regulation E1 or E5 or a preserved pension under regulation E6, in respect of any such employment.

(10) Where paragraph (9) applies, the member may, in respect of any service as an officer which has terminated and to which paragraph 11(1), (6) or (9) of Schedule 1 applies, elect for the said paragraph 11 not to apply and instead to receive a pension under regulation E3 in respect of that service.

(11) A member will not receive a refund of contributions under regulation D9 (refund of contributions) until he or she leaves all pensionable employment without becoming entitled to a pension or a preserved pension under any of regulations E1 to E6.

(12) A member may only exercise a right to transfer or buy-out under Part M (transfers and buy-outs) if he or she 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.

(13) Any amount by which a member's pensionable pay in respect of concurrent part-time employment exceeds the amount which the Scottish Ministers determine would have been paid in respect of a single comparable whole-time employment will be ignored.

(14) 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<sup>(82)</sup>.

(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 his or her employment until the date he or she 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 or she 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).

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<sup>(82)</sup> 1972 c.58.

### **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(1) of the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003<sup>(83)</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.

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<sup>(83)</sup> S.S.I. 2003/344

(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(4) (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>(84)</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>(85)</sup> or a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald), or
- (c) any other occupational pension scheme approved for this purpose by the Scottish Ministers.

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<sup>(84)</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>(85)</sup> S.I. 1972/1073 (N.I. 10).

(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 the Scottish Ministers to credit him or her 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 Scottish Ministers 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 or her pensionable service before his or her 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 Scottish Ministers; 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 or her earnings were reduced.

(4) A member wishing to exercise the option described in this regulation must make application in writing to the Scottish Ministers within 3 months after his or her earnings are reduced.

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(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 pensionable service on which the 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 or she 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 Scottish Ministers under section 102(1) of the 1978 Act <sup>(86)</sup>.

(2) For the purposes of these Regulations, the Scottish Ministers or the State Hospitals Board for Scotland established under the State Hospitals Board for Scotland Order 1995<sup>87</sup>, 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 (Superannuation schemes as respects civil servants, etc) <sup>(88)</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
- (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;

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<sup>(86)</sup> Section 102(1) was amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13), Schedule 4, paragraph 3.

<sup>(87)</sup> S.I. 1995/574.

<sup>(88)</sup> 1972 c.11. Section 1 was relevantly amended by the Pensions (Miscellaneous Provisions) Act 1990 (c.7), section 8, the 1993 Act, Schedule 8, paragraph 6 and the 1995 Act..

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

### **Participators in pilot schemes**

**R13.**—(1) For the purposes of these Regulations, for the duration of any pilot scheme—

- (a) a registered dentist—
  - (i) who, immediately before the commencement of the pilot scheme, was a member by reason of his or her employment as a practitioner, and
  - (ii) who is involved in the operation of the pilot scheme, whether as a person providing piloted services or a dental pilot scheme employee,

shall be treated as a practitioner employed by the relevant Health Board;

- (b) a registered dentist, who immediately before the commencement of the pilot scheme was not a member by reason of his or her employment as a practitioner, shall, if he or she is—
  - (i) providing piloted services, be treated as a practitioner employed by the relevant Health Board; or
  - (ii) a dental pilot scheme employee, be treated as an officer employed by the provider of the piloted services;
- (c) a registered dentist who is engaged, under a contract for services, by a person providing piloted services to carry out personal dental services in accordance with a pilot scheme shall be treated as a practitioner employed by the relevant Health Board;
- (d) a member who, immediately before the commencement of a pilot scheme—
  - (i) was employed as a NHS employee or as an NHS dental employee and was not a registered dentist; or
  - (ii) was employed as a dental pilot scheme employee and was not a registered dentist,

and who, after the commencement of the pilot scheme, is providing piloted services, shall be treated as a whole-time officer employed by the relevant Health Board;

- (e) a person other than a registered dentist who—
  - (i) is employed as a dental pilot scheme employee otherwise than by a Health Board;
  - (ii) immediately prior to the commencement of such employment, was employed by a Health Board as an NHS dental employee; and
  - (iii) was at that time a member,

shall continue to be eligible to be a member;

- (f) a dental therapist who—
  - (i) is a provider of piloted services or is a dental pilot scheme employee; and
  - (ii) immediately prior to the commencement of the dental pilot scheme was not a member,

shall be eligible to be a member;

- (g) a person who is providing piloted services shall be liable to pay contributions under regulation D2 in respect of a member to whom paragraph (c) above applies, or who is employed by them as a dental pilot scheme employee;

(2) In paragraph (1) above, “relevant Health Board ” means the Health Board with which agreement or agreements constituting the pilot scheme in question has or have been made.

**Pension sharing on divorce or nullity of marriage or dissolution or nullity of a civil partnership**

**R14.**—(1) PART T and Schedule 2 shall have effect in relation to—

- (a) pension credit rights, or, as the case may be,
- (b) pension credit benefit payable, or
- (c) pension debits,

under the Scheme.

(2) Except as provided for in this regulation, in Part T and in Schedule 2, Parts B to W shall not apply to a person entitled to a pension credit or to a pension credit member.

**PART S**

**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)), E5 (early retirement pension (with actuarial reduction)) or a preserved pension is payable to the member in the circumstances described in E6, and, within one month of the date on which the pension becomes payable, the member enters NHS employment in which he or she is engaged for more than 16 hours per week.

(2) A member to whom this regulation applies must inform his or her employer, and any other person that the Scottish Ministers may specify, that his or her 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 2 of the Superannuation Act 1984<sup>(89)</sup>(an Act of Tynwald) apply.

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

**S2.**—(1) Subject to paragraph (13) and except in a case to which paragraph (2) applies, this regulation applies, until he or she reaches age 60, to any member who continues in or returns to NHS employment after his or her pension becomes payable under any of regulations E1 to E4 or in accordance with regulation E6(2)(b).

(2) This paragraph applies where the member has been transferred into NHS employment as a result of a transfer of an undertaking to the employer.

(3) A member to whom this regulation applies must inform his or her employer, and any other person that the Scottish Ministers may specify, that his or her pension under the scheme has become payable.

(4) 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.

(5) Subject to paragraph (6), 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 or her 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.

(6) A member’s employment with an employer with whom an agreement has been made under section 89 of the 1978 Act<sup>(90)</sup> or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967<sup>(91)</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.

(7) For the purposes of paragraph (4), the amount to be taken as previous pay shall—

- (a) be increased in each financial year by the amount 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;

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<sup>(89)</sup> [REFERENCE].

<sup>(90)</sup> Section 89 of the 1978 Act replaced section 18 of the National Health Service (Amendment) Act 1949 (c.93).

<sup>(91)</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.

- (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 14 of Schedule 1 in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.
- (8) For the purpose of calculating the reduction to be made under paragraph (4) in respect of any part of a financial year, the amount of the member's previous pay will be reduced proportionately.
- (9) 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.
- (10) Where paragraph (9) 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 (11).
- (11) For the purpose of paragraph (10), previous pay shall be increased by the amount of the member's pensionable pay or annual rate of pay (calculated as described in paragraph (12)) whichever is the greater, that relates to the member's last year of concurrent pensionable employment increased in accordance with paragraph (7)(a).
- (12) 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 or her pension became payable as consisted of salary, wages or other regular payments of a fixed nature plus so much of his or her pensionable pay as consisted of fees and other regular payments not of a fixed nature as was payable during the last year before his or her pension became payable;
- “continuing employment” means, for the purposes of paragraph (1), a pensionable employment which a person held immediately before he or she became entitled to the said pension and which he or she 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 the member's pensionable pay had he or she been in pensionable employment); and

“previous pay” means, subject to paragraphs (7) to (9), the greatest 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.

(13) This regulation shall not apply to practice staff in respect of whom a pension is payable under any of regulations E1 to E6 who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who–

- (a) were ineligible to rejoin the scheme with effect from 1st September 1997; or
- (b) made an election not to rejoin the scheme with effect from that date and who do not cancel that election.

**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.

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(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 or she left NHS employment and become entitled to a pension, based on his or her later service, under regulation E1 (normal retirement pension) on the date of his or her 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 or civil partner, the spouse's or civil partner's pension for the first 3 months after the member's death (6 months if the member leaves a dependant child who is dependant on the spouse or civil partner) shall be equal to the total of the member's rate of pensionable pay when he or she 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 or civil partner's pension and any child allowance which would otherwise be payable under these regulations is greater than the spouse's or civil partner's pension payable under that paragraph.

(6) Except while the pension is payable at the rate mentioned in paragraph (4), any spouse's or civil partner'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 dependant child but no surviving spouse or civil partner, 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 or she died and the amount of the member's pension (if any) that he or she was receiving at that time.

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

(9) Subject to paragraph (10), except where a spouse's or civil partner'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 or she had stayed in the later pensionable employment until age 65.

## PART T

### PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE OR ON THE DISSOLUTION OR NULLITY OF A CIVIL PARTNERSHIP

#### PRELIMINARY PROVISIONS

##### **Interpretation**

**T1.** The definitions of expressions contained in regulation A2(4) apply for their interpretation to this Part.

#### SHARING OF RIGHTS

##### **Pension sharing mechanism in the Scheme**

**T2.—**(1) Pension sharing is available under the Scheme in respect of any of a person’s shareable rights under the Scheme except as otherwise provided in this regulation.

(2) Excluded from shareable rights<sup>(92)</sup> for the purposes of these Regulations are any rights under the Scheme in respect of which a person is in receipt of a pension by virtue of being the surviving spouse or other dependant of a deceased member with pension rights under the Scheme and any other rights which are prescribed as excluded<sup>(93)</sup>.

##### **Pension sharing order activates pension sharing creating pension debits and credits**

**T3.** On the coming into effect of a pension sharing order—

- (a) the transferor’s shareable rights under the Scheme become subject to a debit of the appropriate amount (“pension debit”<sup>(94)</sup>) as defined in regulation T4, and
- (b) the transferee becomes entitled to a credit of that amount (“pension credit”<sup>(95)</sup>) as against the Scottish Ministers.

##### **Calculation of “appropriate amount”**

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<sup>(92)</sup> See section 27(2) of the 1999 Act and section 2 of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

<sup>(93)</sup> See regulation 2(1) of the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052) which describes rights of a description which are not to be classed as shareable rights for the purposes of section 27(2) of the 1999 Act.

<sup>(94)</sup> This definition is that in section 29(1)(a) of the 1999 Act and under corresponding Northern Ireland legislation.

<sup>(95)</sup> This definition is that in section 29(1)(b) of the 1999 Act and under corresponding Northern Ireland legislation.

**T4.**—(1) Where the relevant pension sharing order specifies a percentage value to be transferred, the appropriate amount for the purposes of regulation T3 is the specified percentage of the cash equivalent of the relevant benefits on the valuation day.

(2) Where the relevant pension sharing order specifies an amount to be transferred, the appropriate amount for the purposes of regulation T3 is the lesser of—

- (a) the specified amount, and
- (b) the cash equivalent of the relevant benefits on the valuation day.

(3) Where the transferor is in pensionable service under the Scheme on the transfer day, the relevant benefits for the purposes of paragraphs (1) and (2) are the benefits or future benefits to which the transferor would be entitled under the Scheme by virtue of his or her shareable rights under it had his or her pensionable service terminated immediately before that day.

(4) Otherwise, the relevant benefits for the purposes of sub-paragraphs (1) and (2) are the benefits or future benefits to which, immediately before the transfer day, the transferor is entitled under the terms of the Scheme by virtue of his or her shareable rights under it.

(5) For the purposes of this regulation, the valuation day is such day within the implementation period for the discharge of the credit referred to in regulation T3(b) as the Scottish Ministers may specify by notice in writing to the transferor and transferee.

(6) In this regulation, the transfer day means the day on which the relevant pension sharing order takes effect<sup>(96)</sup>.

#### **Pension debits and reduction of benefit**

**T5.**—(1) Subject to paragraph (2), where a member's shareable rights are subject to a pension debit, each benefit or future benefit—

- (a) to which he or she is entitled under the Scheme by virtue of those rights, and
- (b) which is a qualifying benefit,

is reduced by the appropriate percentage.

(2) Where a pension debit relates to the shareable rights under the Scheme of a member who is in pensionable service under the Scheme on the transfer day, each benefit or future benefit—

- (a) to which the person is entitled under the Scheme by virtue of those rights, and
- (b) which corresponds to a qualifying benefit,

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<sup>(96)</sup> This definition is that in section 29(8) of the 1999 Act.

is reduced by an amount equal to the appropriate percentage of the corresponding qualifying benefit.

(3) A benefit is a qualifying benefit for the purposes of paragraphs (1) and (2) if the cash equivalent by reference to which the amount of the pension debit is determined includes an amount in respect of it.

(4) In this regulation<sup>(97)</sup>–

“appropriate percentage”, in relation to a pension debit, means–

- (a) if the relevant order or provision specifies the percentage value to be transferred, that percentage;
- (b) if the relevant order specifies an amount to be transferred, the percentage which the appropriate amount for the purposes of subsection (1) of section 29 of the 1999 Act represents of the amount mentioned in subsection (3)(b) of that section;

“relevant order or provision”, in relation to a pension debit, means the pension sharing order on which the debit depends;

“transfer day”, in relation to a pension debit, means the day on which the relevant order or provision takes effect.

### **Effect of pension sharing on protected rights and guaranteed minimum pension**

**T6.** Where a member has protected rights or a guaranteed minimum in relation to a pension provided by the Scheme, these shall in the case of a pension debit in relation to the member’s rights under the Scheme be reduced in terms of the provisions in sections 10(4) and (5) and 15A of the 1993 Act<sup>(98)</sup>.

### MODE OF DISCHARGE AND “IMPLEMENTATION PERIOD”

#### **Discharge of pension credit liability**

**T7.**—(1) The Scottish Ministers in relation to a pension credit derived from the Scheme may discharge their liability in respect of the credit by conferring appropriate rights under the Scheme on the ex-spouse or the ex-civil partner.

(2) For the purposes of this paragraph, rights conferred on the ex-spouse or the ex-civil partner are appropriate if–

- (a) they are conferred with effect from, and including, the day on which the pension sharing order, under which the credit arises takes effect, and

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<sup>(97)</sup> The definitions in this paragraph are those in section 31(5) of the 1999 Act.

<sup>(98)</sup> 1993 c.30. Sections 10(4) and (5) and 15A of that Act were inserted by section 32 of the 1999 Act.

- (b) their value, when calculated in accordance with regulations made by the Secretary of State under section 30(1) of the 1999 Act in relation to the calculation of cash equivalents<sup>(99)</sup>, equals the amount of the credit.

**Adjustment to the amount of the pension credit payments made without the knowledge of the pension debit**

**T8.** If–

- (a) a person’s shareable rights under the Scheme have become subject to a pension debit,
- (b) the Scottish Ministers make a payment which is referable to those rights without knowing of the pension debit, and
- (c) the cash equivalent of the member’s shareable rights after deduction of the payment is less than the amount of the pension debit,

the pension credit shall be reduced to that lesser amount<sup>(100)</sup>.

**“Implementation period” for discharge of pension credit**

**T9.**—(1) The Scottish Ministers shall discharge their liability in respect of a pension credit within “the implementation period”<sup>(101)</sup>, which for a pension credit is the period of 4 months beginning with the later of–

- (a) the day on which the relevant pension sharing order takes effect, and
- (b) the first day on which the Scottish Ministers in relation to the relevant pension sharing order are in receipt of–
  - (i) the relevant documents, and
  - (ii) such information relating to the transferor and transferee as the Secretary of State may prescribe by regulations made under section 34(1)(b)(ii) of the 1999 Act<sup>(102)</sup>.

(2) The reference in sub-paragraph (1)(b)(i) to the relevant documents is to copies of–

- (a) the relevant pension sharing order, and
- (b) the order, decree or declarator responsible for the divorce or annulment or dissolution to which it relates,

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<sup>(99)</sup> See the Pension Sharing (Valuation) Regulations 2000 (S.I. 2000/1052).

<sup>(100)</sup> See paragraph 9 of Schedule 5 to the 1999 Act and regulation 17 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

<sup>(101)</sup> Section 33(1) of the 1999 Act.

<sup>(102)</sup> See regulation 5 of the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (S.I. 2000/1048).

and, if the pension credit depends on provision falling within sub-section (1)(f) of section 28 of the 1999 Act<sup>(103)</sup>, to documentary evidence that the agreement containing the provision is one to which sub-section (3)(a) of that section applies.

(3) Paragraph (1) is subject to any provision made by regulations under section 41(2)(a) of the 1999 Act<sup>(104)</sup>.

(4) The provisions of this regulation are subject to any provisions or requirements which the Secretary of State may make by regulations under sections 34(4)(a) and (c) of the 1999 Act which—

- (a) make provision requiring a person subject to liability in respect of a pension credit to notify the transferor and transferee of the day on which the implementation period for the credit begins;
- (b) provide for that section to have effect with modifications where the pension credit depends on a pension sharing order and the order is the subject of an application for leave to appeal out of time<sup>(105)</sup>.

**Failure to discharge liability in respect of pension credit within the implementation period - Death of ex-spouse or ex civil partner within period**

**T10.**—(1) Where the Scottish Ministers have not done what is required to discharge their liability in respect of a pension credit before the end of the implementation period for the credit—

- (a) they shall, except in such cases as the Secretary of State may prescribe by regulations under section 33(2)(a) of the 1999 Act<sup>(106)</sup>, notify the Regulatory Authority of that fact within such period as the Secretary of State may so prescribe, and
- (b) section 10 of the 1995 Act<sup>(107)</sup> (power of the Regulatory Authority to impose civil penalties) shall apply where Scottish Ministers have failed to take all such steps as are reasonable to ensure that liability in respect of the credit was discharged before the end of the implementation period for it.

(2) If the Scottish Ministers fail to perform the obligation imposed by regulation 10(1)(a), section 10 of the 1995 Act shall apply.

(3) Where the Scottish Ministers are subject to liability in respect of a pension credit, the Regulatory Authority may, on the application of the Scottish Ministers, extend the

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<sup>(103)</sup> Section 28(1)(f) was amended by the Civil Partnership Act 2004 (c.33), Schedules 27 and 30.

<sup>(104)</sup> See regulation 7 of the Pensions on Divorce etc. (Charging) Regulations 2000 (S.I. 2000/1049), which specifies circumstances in which the implementation period may be postponed.

<sup>(105)</sup> See regulation 4 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (S.I. 2000/1053).

<sup>(106)</sup> See regulation 2 of S.I. 2000/1053 which prescribes a 21 day period beginning with the day immediately following the end of the implementation period.

<sup>(107)</sup> Section 10 was amended by the 1999 Act, Schedule 2 and by the Pensions Act 2004 (c.35), Schedules 12 and 13.

implementation period for the pension credit for the purposes of this section if it is satisfied that the application is made in such circumstances as the Secretary of State may prescribe by regulations made under section 33(4) of the 1999 Act<sup>108</sup>).

(4) In this regulation “the Regulatory Authority” means the Occupational Pensions Regulatory Authority.

(5) Where an ex-spouse or ex civil partner dies before the Scottish Ministers have discharged their liability in respect of the pension credit, that liability may be discharged by payment of a lump sum.

(6) The lump sum shall be equal to 3 times the annual rate of the pension which would have been paid if on the date of his or her death he or she had become entitled to a pension as a pension credit member calculated under regulation T11(3) in accordance with guidance issued by the Government Actuary.

(7) The Scottish Ministers shall pay the lump sum to the deceased’s personal representative.

#### APPROPRIATE RIGHTS/PENSION CREDIT BENEFITS

##### **“Appropriate rights”/“Pension credit benefits” under the Scheme**

**T11.**—(1) Except as referred to in regulation T14 or otherwise in this Regulation, the “appropriate rights” under the Scheme to which a pension credit member shall be entitled shall consist only of a pension, a lump sum on retirement and rights in relation to a lump sum on death as provided under the Scheme.

(2) Pension credit benefits are subject to the same indexing as other benefits payable under the Scheme.

(3) The value of the pension referred to in this paragraph shall equal the value of the pension credit rights which have accrued to or in respect of the pension credit member.

(4) A pension credit member is entitled to his or her pension credit benefits on reaching his or her normal benefit age.

(5) The pension credit benefits are payable immediately on reaching normal benefit age and may not be deferred.

(6) A pension payable in accordance with this Regulation shall be payable to the pension credit member for life.

(7) The amount of the lump sum on retirement to which a pension credit member shall be entitled shall be calculated on the same basis as if his or her pension were a deferred pension under the Scheme and shall be equal to 3 times the annual rate of pension, except that no lump sum on retirement shall be paid to the pension credit member if the corresponding

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<sup>(108)</sup> See regulation 3 of S.I. 2000/1053.

pension debit member has already received a lump sum on retirement from the Scheme before the date of the implementation of the pension sharing order.

**Pension credit member dies after pension credit benefit becomes payable**

**T12.**—(1) If a pension credit member dies after his or her pension under the Scheme becomes payable, a lump sum on death shall be payable in accordance with Regulation F5 (payment of lump sum).

(2) Subject to paragraph (3), the lump sum on death shall be equal to 5 times the annual rate of the pension credit member’s pension as calculated under regulation T11(3) less the amount of pension already paid.

(3) The maximum payment under paragraph (2) shall not exceed an amount equal to twice the pension debit member’s final year’s pensionable pay on the valuation day, from whose rights the pension credit is derived, less an amount equal to the pension credit member’s retirement lump sum paid in accordance with regulation T11(7).

(4) The final year’s pensionable pay under paragraph (3) shall be increased by the amount that the member’s benefits would have been increased under Part 1 of the Pensions (Increase) Act 1971<sup>(109)</sup> if benefits had been preserved on the valuation day.

**Pension credit member dies before pension credit benefit becomes payable**

**T13.**—(1) If a pension credit member dies before his or her pension under the Scheme becomes payable, a lump sum shall be payable in accordance with regulation F5 (payment of lump sum).

(2) The lump sum shall be equal to 3 times the annual rate of the pension credit member’s pension calculated under regulation T11(3).

**Additional contributions and additional periods**

**T14.**—(1) Subject to paragraph (2), an active member, whose benefits have been made subject to a pension sharing order, shall not be allowed to replace any rights debited to the member as a consequence of the pension sharing order with any rights which the member would not have been able to acquire (in addition to the debited rights) had the pension sharing order not been made.

(2) The provisions of paragraph (1) shall be relaxed if in line with any taxation exception or concession, which HM Revenue and Customs may stipulate in relation to “moderate earners” in accordance with the limits imposed in Schedule 10 to the Finance Act 1999<sup>(110)</sup> and any modifications thereto made by HM Revenue and Customs from time to time under paragraph 18(10) and (11) of that Schedule<sup>(111)</sup>, or otherwise.

**Commutation: small pensions**

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<sup>(109)</sup> 1971 (c.56).

<sup>(110)</sup> 1999 c.16. Schedule 10, paragraph 18 is amended by S.I. 2000/1085 and is prospectively repealed by the Finance Act 2004 (c.12), Schedule 42, Part 3.

<sup>(111)</sup> See S.I.s 2000/ 1085 and 1093.

**T15.**—(1) Regulation U7 shall apply, if as a result of a pension sharing order the annual rate of the retirement pension, which a member who has attained state pensionable age is entitled to be paid, falls below the sum mentioned in that regulation.

(2) A pension may be treated as “trivial” under regulation U7 in respect of the retirement pension payable to a pension credit member in respect of a pension credit and the amount of that pension shall, for the purpose of this regulation, be aggregated with any other pension payable to that member under the Scheme.

### **Commutation: exceptional ill-health**

**T16.**—(1) The whole of the pension element payable in respect of the pension credit may be commuted for a lump sum before normal benefit age in circumstances where the person entitled to the pension credit benefit is suffering from serious ill-health prior to the normal benefit age.

(2) In this regulation, “serious ill-health” means ill-health which is such as to give rise to a life expectancy of less than one year from the date on which the commutation of the pension credit benefit is applied for.

(3) The lump sum shall be equal to five times the annual rate of the pension to which the pension credit member would have been entitled as calculated under regulation T11(3) of this Part if on the date of commutation he or she had already reached the normal benefit age and shall be payable in addition to any retirement lump sum as calculated under regulation T11(7) of this Part.

### **Pension Transfers**

**T17.** The Scottish Ministers shall not accept any transfer value into the Scheme or pay any transfer value out of the Scheme in respect of any pension credit rights or pension credit benefits.

## MISCELLANEOUS

### **Charges in respect of pension sharing costs**

**T18.**—(1) The Scottish Ministers may recover from the parties involved in pension sharing, charges as set out in paragraph (2).

(2) The charges referred to in paragraph (1) are any costs reasonably incurred by the Scottish Ministers in connection with pension sharing activity other than those costs specified in paragraph (3).

(3) The costs specified in this paragraph are any costs which are not directly related to the costs which arise in relation to an individual case<sup>(112)</sup>.

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<sup>(112)</sup> See regulation 5 of the Pensions on Divorce etc (Charging) Regulations 2000 (S.I. 2000/1049).

(4) The Scottish Ministers shall, before a pension sharing order is made, inform the member or the member's spouse or civil partner, as the case may be, in writing of their intention to recover costs incurred with any description of pension sharing activity and provide the member or their spouse or civil partner, as the case may be, with a written schedule of charges in accordance with regulations which may be made by the Secretary of State under section 41(1) of the 1999 Act<sup>(113)</sup>.

### **Excluded membership**

**T19.**—(1) Subject to regulation T15(2) of this Part, pension credit rights or pension credit benefits may not be aggregated with any other rights or benefits under the Scheme (including those attributable to a different pension credit).

(2) Where a pension credit member is also an active member of the Scheme, he or she may not count any period which may count for any purpose in connection with his or her pension credit benefit towards any membership period required under the Scheme.

### **General rules about benefits**

**T20.** Regulations U1 (claims for benefits), U2 (deduction of tax), and U4 (beneficiary who is incapable) shall apply to a pension credit member.

### **Assignment**

**T21.** Except as may be required by law, or is necessary in law to give effect to a pension sharing order or is otherwise permitted for the purpose of this Part of the Scheme, pension credit benefits under the Scheme may not be assigned, charged or otherwise made subject to a security.

### **Administrative matters**

**T22.** Regulation V2 (determination of questions) shall apply to a person who is entitled to a pension credit or, as the case may be, a pension credit member.

## **PART U**

### **GENERAL RULES ABOUT BENEFITS**

#### **Claims for benefits**

**U1.** A person claiming to be entitled to benefits under these Regulations shall make a claim in writing to the Scottish Ministers and shall provide such evidence of entitlement as the Scottish Ministers may require.

#### **Deduction of tax**

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<sup>(113)</sup> See regulations 2-9 of S.I. 2000/1049, as amended by SI 2000/2691.

**U2.** The Scottish Ministers shall be entitled to deduct from any payment under the scheme any tax for which they may be liable in respect of it.

**Benefits not assignable**

**U3.—**(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>(114)</sup> or under section 310 of the Insolvency Act 1986<sup>(115)</sup> (income payments orders) that requires the Scottish Ministers to pay all or part of the benefit to the person's trustee in bankruptcy, the Scottish Ministers shall comply with that order.

**Beneficiary who is incapable**

**U4.—**(1) If the Scottish Ministers consider that a beneficiary is unable to look after his or her affairs (by reason of illness, mental disorder, minority or otherwise), they may use any amounts due to the beneficiary for his or her 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 Scottish Ministers from any obligation in respect of the amount concerned.

**Offset for crime, fraud or negligence**

**U5.—**(1) If they are satisfied that a loss to public funds has occurred as a result of a member's criminal, fraudulent or negligent act or omission, the Scottish Ministers 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 of a reduction under paragraph (1) may result in the benefits ceasing to be payable.

(3) The Scottish Ministers 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.

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<sup>(114)</sup> 1985 c.66. Section 32 was amended by the 1995 Act, Schedule 3 and the 1999 Act, section 18.

<sup>(115)</sup> 1986 c.45. Section 310 was amended by the 1995 Act, Schedule 3, the 1999 Act, section 18 and Schedule 2 and the Enterprise Act 2002 (c.40), section 259 and Schedule 26.

(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**

**U6.**—(1) Subject to paragraph (2), the Scottish Ministers 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 Scottish Ministers 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>(116)</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) Subject to paragraph (3), the Scottish Ministers may also direct that all or part of any rights to benefits or other amounts payable in respect of a member be forfeited where such benefits or amounts are payable to a person who is—

- (a) the member's widow, widower or surviving civil partner; or
- (b) a dependant of the member; or
- (c) a person not coming within sub-paragraph (a) or (b) who is specified in a notice given under regulation F5(4); or
- (d) a person to whom such benefits or amounts are payable under the member's will or on their intestacy,

and that person is convicted of the offence of murder or culpable homicide of that member or of any other offence of which unlawful killing of that member is an element.

(3) A guaranteed minimum pension may be forfeited only if paragraphs (1)(b) or (c) apply.

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<sup>(116)</sup> 1911 c.28; 1920 c.75; 1939 c.121; 1989 c.6.

### **Commutation of trivial pensions**

**U7.**—(1) Where a person has become entitled to a pension of a trivial amount, the Scottish Ministers 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 Scottish Ministers, 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<sup>117</sup> 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 Scottish Ministers' 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**

**U8.**—(1) This regulation applies to members—

- (a) who had ceased to be in pensionable employment before 1<sup>st</sup> April 1995 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 1<sup>st</sup> April 1995, returned to pensionable employment, in which case the pension under the 1980 Regulations will be subject to this regulation unless their benefits fall to be calculated by reference to combined pensionable service before and after 1<sup>st</sup> April 1995.

(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>(118)</sup> and the National Insurance Act 1965<sup>(119)</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 1980 Regulations.

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<sup>(117)</sup> Section 591 is prospectively repealed by the Pensions Act 2004 (c.35), Schedule 42, Part 3.

<sup>(118)</sup> 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.

<sup>(119)</sup> 1965 c.51.

(4) Benefits for members who paid contributions under section 1(1)(b) of the National Insurance Act 1959<sup>(120)</sup>, section 4 of the National Insurance Act 1965<sup>(121)</sup> or the corresponding provisions of the National Insurance Act (Northern Ireland) 1959<sup>(122)</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.

### **Interest on late payment of benefits**

**U9.**—(1) Subject to paragraph (2) below, where the whole or any part of a qualifying payment under these Regulations is not paid by the end of the period of one month beginning with the due date, the Scottish Ministers shall pay interest, calculated in accordance with paragraph (3) below, on the unpaid amount to the person to whom the qualifying payment should have been made.

(2) Interest under paragraph (1) above shall not be payable where the Scottish Ministers are satisfied that the qualifying payment was not made on the due date by reason of some act or omission on the part of the member or other recipient of the qualifying payment.

(3) The interest referred to in paragraph (1) above shall be calculated at the base rate on a day to day basis from the due date to the date of payment, and shall be compounded with three-monthly rests.

(4) In this regulation—

“base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such rate, the rate which, when the base rate quoted by each reference bank is ranked in a descending sequence, is the first in the sequence;

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<sup>(120)</sup> 1959 c.47; this Act was repealed by the Statute Law Revision (Consequential Repeals) Act 1965 but a savings provision is necessary to cover benefits already paid under the 1959 Act.

<sup>(121)</sup> 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.

<sup>(122)</sup> 1959 c.21 (N.I.).

“due date” means–

- (a) in the case of a lump sum under Part F above, the day immediately following the day of the member’s death, unless the lump sum falls to be paid to the member’s personal representative, in which case it means–
  - (i) the date on which probate or letters of administration are produced to the Scottish Ministers; or
  - (ii) the Scottish Ministers are satisfied that the lump sum may be paid as provided in regulation F5(7),  
whichever is the earlier;
- (b) in the case of a pension payable on a member’s death, the day immediately following the day of his or her death;
- (c) in the case of a pension under regulation E6, the day on which the pension becomes payable in accordance with that regulation;
- (d) in the case of a refund of contributions, the day after that on which the Scottish Ministers receive from HM Revenue and Customs the information they require for the purposes of compliance with paragraphs (2) to (4) of regulation E9; and
- (e) in any other case, the day immediately following that of the member’s retirement from pensionable employment;

“qualifying payment” means any amount payable by way of a pension or lump sum, or by way of a refund of contributions, under these Regulations;

“reference banks” means the four largest persons for the time being who–

- (a) have permission under Part 4 of the Financial Services and Markets Act 2000 <sup>(123)</sup> to accept deposits;
- (b) are incorporated in and carrying on in the United Kingdom a regulated activity of accepting deposits; and
- (c) quote a base rate applicable to sterling deposits.

## PART V

### ADMINISTRATIVE MATTERS

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

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<sup>(123)</sup> 2000 c.8, to which there are amendments not relevant to these Regulations..

**V1.** In any particular case, the Scottish Ministers may extend any time limit mentioned in these Regulations.

**Determination of questions**

**V2.** The Scottish Ministers will determine any question concerning any person's rights or liabilities under these Regulations.

**Accounts and actuarial reports**

**V3.—(1)** The Scottish Ministers 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 2003 and at the expiration of every period of 4 years after that date.
- (4) The Government Actuary will send copies of each actuarial report of the scheme to the Scottish Ministers and the Treasury.
- (5) Employing authorities shall keep records of all-
  - (a) contributions deducted from salaries and wages; and
  - (b) contributions to the scheme made under D2(1)

in a manner approved by the Scottish Ministers and, except where the Scottish Ministers waive such requirements, provide a statement in respect of such matters, covering all scheme members except principal practitioners and non GP providers, to the Scottish Ministers within 2 calendar months of the end of each financial year.

(6) In respect of each financial year, employing authorities shall also provide the Scottish Ministers, where appropriate, with the best estimate in writing that can reasonably be made of the total contributions due to the scheme under regulations D1 and D2(1) within 2 months of each such year.

PART W

MISCELLANEOUS AND SUPPLEMENTARY

**Revocations, savings and transitional provisions**

**W1.—(1)** The Regulations specified in column 1 of the Table in Schedule 4 are revoked to the extent specified in Column 3 of that Table.

- (2) Without prejudice to section 16 of the Interpretation Act 1978<sup>(124)</sup>: -
- (a) the revocation by these Regulations of a provision previously revoked or amended subject to savings does not affect the previous operation of those savings; and
  - (b) the revocation by these Regulations of a saving or an opt out made on the previous revocation or amendment of a provision does not affect the operation of the saving or opt out insofar as it remains capable of having effect.
- (3) Anything done or any right or liability acquired under or by virtue of any regulation revoked by these Regulations, if it could have been done or acquired under or for the purposes of these Regulations, shall be deemed to have been done or acquired 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.
- (4) The re-enactment of provisions in these Regulations, and the consequent revocation of those provisions by these Regulations, does not affect the continuity of the law and, subject to paragraphs (2) and (5) and any express provision to the contrary, these Regulations apply to matters arising before the commencement of these Regulations as to matters arising after that commencement.
- (5) The revocation by these Regulations of a transitional provision relating to the coming into force of a provision re-enacted in these Regulations does not affect the operation of that transitional provision, so far as it remains capable of having effect, in relation to the provision as re-enacted.

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<sup>(124)</sup> 1978 c.30.

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(6) Where a period of time specified in a provision of any Regulations revoked by these Regulations is current at the commencement of these Regulations, these Regulations have effect as if the corresponding provision of these Regulations had been in force when that period began to run.

[A member of the Scottish Executive  
[Authorised to sign by the Scottish Ministers]

St Andrew's House,  
Edinburgh  
[Date] 2006

We consent.

Two of the Lords Commissioners of Her Majesty's Treasury

[Date]

SCHEDULE 1

MEDICAL AND DENTAL PRACTITIONERS

PART 1

DEFINITIONS AND MODIFICATIONS

**Additional definitions used in this Schedule**

**1. In this Schedule–**

“assistant practitioner” means -

(a) in the case of a registered medical practitioner-

(i) a GP performer who is not a GP provider but who is-

(aa) employed (whether under a contract of service or for services) by a GMS practice, a section 17C agreement provider, an HBPMS contractor, an OOH provider or a Health Board; and

(bb) who in that employment is engaged wholly or mainly in assisting their employer in the discharge of the employer’s duties as a GMS practice, a section 17C agreement provider, an HBPMS contractor, an OOH provider or a Health Board; or

(ii) a registered medical practitioner who is participating in a Doctors’ Retainer Scheme; and

(b) in the case of a dental practitioner, means a practitioner on a supplementary list employed by a principal practitioner, who in that employment is wholly or mainly engaged assisting his employer in the discharge of the employer’s duties as a registered dentist;

“Board and advisory work” means-

(a) work undertaken as a member of the Board of an employing authority which is not a GMS practice, a section 17C agreement provider, an HBPMS contractor or an OOH provider; or

(b) advisory work commissioned by, and undertaken on behalf of such an authority, where it is connected to the authority’s role in performing, or securing the delivery of primary medical services or associated management activities or similar duties,

but which is not itself the performance of primary medical services and payment for which is made by the employing authority directly to the person carrying out that work;

“Doctors’ Retainer Scheme” means an established Scheme designed to keep doctors who are not working in general practice in touch with general practice as given as referred to in the GMS Statement of Financial Entitlements made under section 17M of the 1978 Act <sup>(125)</sup>;

“officer service” means, subject to paragraph 11 (officer service treated as practitioner service), service as an officer;

“pensionable earnings” has the meaning given in paragraphs 5 to 10;

“practitioner income” has the meaning given in paragraph 5(2);

“practitioner service” means, subject to paragraph 11 (officer service treated as practitioner service), pensionable service as a medical, dental or ophthalmic medical practitioner;

“principal practitioner” means-

- (a) in the case of a registered medical practitioner, a GP provider; and
- (b) in the case of a dental practitioner, a registered dentist who is included in a list prepared in accordance with the National Health Service (General Dental Services) (Scotland) Regulations 1996<sup>(126)</sup>;

“uprated earnings” is to be construed in accordance with paragraph 14(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 or, in the case of a locum practitioner, the listing Authority 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 or, in the case of a locum practitioner, the listing Authority.

(2) In sub-paragraph (1) “the listing Authority”, in relation to a locum practitioner means the Health Board who prepare and publish-

- (a) the medical performers list; or
- (b) the services list under section 17EA or the supplementary list under section 24B of the 1978 Act<sup>(127)</sup>

on which he or she is included.

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<sup>(125)</sup> Section 17M was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 4.

<sup>(126)</sup> S.I 1996/117, amended by S.I. 1998/1663, S.S.I. 1999/51, S.I. 1999/724, S.S.I. 2000/188, S.S.I. 2004/37 and S.S.I. 2005/95.

<sup>(127)</sup> Section 17EA was inserted by section 18(1) of the Community Care and Health (Scotland) Act 2002 (asp 5) and section 24B was inserted by section 18(2) of that Act.

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

(4) 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.

### **Membership: locum practitioners**

**3.—**(1) Regulation B1(2) (automatic membership of the scheme) does not apply to locum practitioners.

(2) A locum practitioner may apply to join the scheme by sending an application to the employing authority and submitting such evidence relating to his or her service as a locum practitioner and the contributions payable in respect of it as are required by the employing authority.

(3) On receiving such an application, such evidence and such contributions, the employing authority must submit the application to the Scottish Ministers.

(4) If a locum practitioner wishes to apply to join the scheme from a date earlier than 1<sup>st</sup> April 2001 he or she must submit an application under sub-paragraph (2) in a case where immediately before 1<sup>st</sup> April 2001 he or she is engaged under a contract for services with a practitioner, by virtue of which he or she is a locum practitioner, not later than ten weeks after he or she ceases to be so engaged.

(5) Except where sub-paragraph (4) applies, no application may be made under sub-paragraph (2) in respect of a period of engagement as a locum practitioner ending earlier than ten weeks before the date of the application.

### **Locum practitioners: breaks between contracts**

**4.—**(1) Paragraph (5) of regulation C3 does not apply to a locum practitioner and instead sub-paragraph (2) applies where a locum practitioner ceases to be engaged as such a practitioner and is re-engaged as such a practitioner before the expiry of a period not exceeding three months from the day on which he or she so ceases.

(2) For the purposes of these Regulations—

(a) a locum practitioner is treated as continuing to be in qualifying service during the period not exceeding three months whilst he or she is not so engaged and as not being required to rejoin the scheme at the time when he or she becomes re-engaged in pensionable service, but

(b) that period does not count as practitioner service or as a period in pensionable employment.

PART II

PENSIONABLE EARNINGS

**Meaning of “pensionable earnings”**

**5.**—(1) In the case of a principal practitioner and a non GP provider who is not in receipt of a salary, wages or fees or any regular payments in respect of their employment as an officer, “pensionable earnings” means practitioner income less—

- (a) any sum on account of certified practice expenses; and
- (b) in the case of a dental practitioner, the pensionable earnings, to the extent allowed by the Scottish Ministers, of any assistant practitioner in the practitioner’s employment or in the case of an assisted practitioner who is not in pensionable employment under the scheme, the amount that would have been taken to be his or her pensionable earnings if he or she were in such pensionable employment.

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

- (a) income which accrues to the practitioner or the non GP provider which is derived from-
  - (i) a GMS contract; or
  - (ii) a section 17C agreement; or
  - (iii) an HBPMS contract; or
  - (iv) payments from, or to, a practitioner who is a GMS practice, a section 17C agreement provider or an HBPMS contractor in respect of the performance of certification services, commissioned services or collaborative services; or
  - (v) the practitioner or the non GP provider’s engagement by a Health Board to assist in the provision of primary medical services under section 2C(2) of the 1978 Act<sup>(128)</sup>; or
  - (vi) in the case of a practitioner, the provision of locum services; or
  - (vii) payments made to a principal practitioner by an OOH provider in respect of the performance of primary medical services, commissioned services, collaborative services and certification services; or

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<sup>(128)</sup> Section 2C(1) was inserted by the Primary Medical Services (Scotland) Act 2004 (asp 1), section 1(2).

(viii) payments made to a principal practitioner by an employing authority in respect of general dental services, general ophthalmic services or pharmaceutical services provided by the practitioner; or

(ix) practice based work carried out in educating or training, or organising the education or training, of medical students or practitioners;

- (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 1978 Act<sup>(129)</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; and
- (d) in the case of a practitioner, allowances and any other sums (but excluding payment made to cover expenses) paid in respect of Board and advisory work.

(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 Scottish Ministers 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.

(4) In sub-paragraph (2)(a), “locum services” shall have the same meaning as for the purposes of paragraph 8.

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

**6.—**(1) In the case of practitioners practising in partnership (with or without a non GP provider who is a partner in the partnership), the pensionable earnings of each principal practitioner and non GP provider who is a partner in a partnership shall be calculated by aggregating the pensionable earnings of each (including for this purpose, any amount that would constitute pensionable earnings in the case of any of them who are not included in the scheme) and, subject to sub-paragraph (2), dividing the total equally by reference to the number of such partners.

(2) Where the principal practitioners and any non GP providers who are partners in a partnership do not share equally in the partnership profits, they may elect that each partner’s pensionable earnings shall correspond to each partner’s share of the partnership profits.

(3) Where a registered medical practitioner practising in partnership also has earnings in respect of NHS employment otherwise than as a practitioner, the partners may elect that the pensionable earnings of that practitioner, as determined in accordance with sub-paragraph (1) or (2), shall be reduced by the amount of those earnings and the pensionable earnings of each

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<sup>(129)</sup>section 73(b) was amended by the Health and Social Security Act 1984 (c.48), Schedule 8 and by the National Health Service (Primary Care) Act 1997 (c.46), Schedule 2.

of them (including that practitioner) be then increased in proportion to their shares in the partnership profits.

(4) The calculations described in sub-paragraphs (2) and (3) will be made by the Health Board to which the partners are required to give notice of their election in accordance with paragraph 5.

**Election relating to calculation of “pensionable earnings” in partnerships**

7.—(1) Practitioners and any non GP providers who are partners in partnership must exercise the election described in paragraph 6 by giving notice in writing to their Contracting Health Board.

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

(3) The notice must be signed by all the principal practitioners and non GP providers in the partnership and must state as a fraction each practitioner’s and non GP provider’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.

(4) 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 financial year, stating the pensionable pay received, in that year, in respect of employment as an officer by each practitioner in the partnership who is so employed.

(5) 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 Scottish Ministers.

(6) 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.

(7) Where a practitioner has opted out of the scheme under regulation B4 the pensionable earnings calculated as in paragraph 6 above shall not be treated as pensionable earnings for the purpose of providing any benefits under these Regulations.

(8) Where medical practitioners gave notice under proviso (b)(iii) of regulation 61(2) of the National Health Service (Superannuation) (Scotland) Regulations 1961<sup>(130)</sup> 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 6 above as if they were not in partnership.

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<sup>(130)</sup> S.I. 1961/1398 as variously amended was repealed by S.I. 1980/1177 but a savings provision is necessary to cover elections already made.

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

**8.—(1)** In the case of an assistant practitioner “pensionable earnings” means—

- (a) all salary, wages, fees and other regular payments paid to the practitioner by an employing authority in respect of the performance of essential services, additional services, enhanced services, dispensing services, OOH services, commissioned services, certification services, collaborative services, general dental services or pharmaceutical services but does not include bonuses or payments made to cover expenses or for overtime;
- (b) allowances and any other sums (but excluding payment made to cover expenses) paid by an employing authority in respect of Board and advisory work; and
- (c) practice based work carried out in educating or training, or organising the education or training of, medical students or practitioners.

(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 Scottish Ministers.

(3) In the case of—

- (a) a dental practitioner providing piloted services, “pensionable earnings” means all fees and other regular payments paid to the dental practitioner in respect of the provision of piloted services, but does not include bonuses or payments made to cover expenses or for overtime;
- (b) a practitioner employed as a dental pilot scheme employee or to whom regulation R13(1)(c) applies, “pensionable earnings” means all salary or wages paid to the practitioner in respect of employment as a practitioner, or all remuneration paid to the practitioner under a contract for services, but does not include bonuses or payments made to cover expenses or for overtime.

(4) In the case of a locum practitioner, “pensionable earnings” means all fees and other payments paid to the locum practitioner in respect of the provision of locum services (but excluding payments made to cover expenses or for overtime), less such expenses as are deductible in accordance with guidance laid down by the Scottish Ministers.

(5) In this paragraph, references to the provision of locum services, in relation to a practitioner, are to primary medical services, commissioned services, collaborative services or pharmaceutical services performed by a practitioner engaged by an employing authority under a contract for services to deputise for a registered medical practitioner or to temporarily assist in the provision of such services.

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

9. Any sum that is withheld or otherwise recovered from a practitioner under the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992<sup>(131)</sup> shall be excluded or deducted from the practitioner's pensionable earnings in such manner and to such extent as the Scottish Ministers may approve.

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

10.—(1) A dental practitioner's pensionable earnings in any financial year ending before 1st April 2006 are subject to the upper limit specified in the following table for the period in which the year falls:—

<i>Period</i>	<i>Upper limit for each year</i>
1 <sup>st</sup> April 1950 to 31st March 1966	£3,500
1 <sup>st</sup> April 1966 to 31st March 1972	£6,000
1 <sup>st</sup> April 1972 to 31st March 1975	£10,000
1 <sup>st</sup> April 1975 to 31st March 1978	£15,000
1 <sup>st</sup> April 1978 to 31st March 1982	£21,000
1 <sup>st</sup> April 1982 to 31st March 1985	£33,000
1 <sup>st</sup> April 1985 to 31st March 1988	£40,000
1 <sup>st</sup> April 1988 to 31st March 1989	£45,000
1 <sup>st</sup> April 1989 to 31st March 1990	£54,000
1 <sup>st</sup> April 1990 to 31st March 1991	£58,000
1 <sup>st</sup> April 1991 to 31st March 1992	£65,000
1 <sup>st</sup> April 1992 to 31st March 1993	£72,000
1 <sup>st</sup> April 1993 to 31st March 1994	£73,000
1 <sup>st</sup> April 1994 to 31st March 1995	£75,000
1 <sup>st</sup> April 1995 to 31st March 1996	£77,000
1 <sup>st</sup> April 1996 to 31st March 1997	£80,000
1 <sup>st</sup> April 1997 to 31st March 1998	£82,000
1 <sup>st</sup> April 1998 to 31st March 1999	£85,000
1 <sup>st</sup> April 1999 to 31st March 2000	£88,000
1 <sup>st</sup> April 2000 to 31st March 2001	£90,900
1 <sup>st</sup> April 2001 to 31st March 2002	£94,400
1 <sup>st</sup> April 2002 to 31st March 2003	£101,300
1 <sup>st</sup> April 2003 to 31st March 2004	£105,800
1 <sup>st</sup> April 2004 to 31st March 2005	£108,900

(2) A dental practitioner's pensionable earnings in any financial year starting after 1st April 2006 are subject to the upper limit specified for that year by the Scottish Ministers.

(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 or her by those persons, plus any amounts paid by a Health Board that those persons allow him or her to retain.

<sup>(131)</sup> S.I. 1992/434.

PART III

OFFICER SERVICE TREATED AS PRACTITIONER SERVICE

**Officer service treated as practitioner service**

**11.—(1)** Subject to sub-paragraph (3), if a member does not have more than 10 years' officer service on first becoming a principal practitioner or a practitioner providing piloted services under an agreement between that practitioner and a Health Board or Primary Care NHS Trust, the member's officer service before first becoming a principal practitioner will be treated as practitioner service.

(2) For the purposes 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—

- (a) may be disregarded and his or her uprated earnings increased by the same proportion as his or her practitioner's service is increased by virtue of the officer service being treated as practitioner service under sub-paragraph (1); or
- (b) may be treated as pensionable earnings,

whichever is more favourable to the member.

(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>(132)</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 or her pension becomes payable the calculation will be made at the date of his or her death and by reference to the pension which would have become payable under regulation E1 (normal retirement pension) or E6 (preserved pension) if he or she 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.

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<sup>(132)</sup> 1971 c.56.

- (6) Where a member has more than 10 years' officer service before first becoming—
- (a) a principal practitioner; or
  - (b) a practitioner providing piloted services,

the member's officer service before first becoming a principal practitioner or a practitioner providing piloted services may be treated as practitioner service if it would be more favourable to the member.

(7) For the purposes of calculating any benefits 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 shall be treated as pensionable earnings.

(8) Subject to sub-paragraph (12), 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 or her pension under the scheme becomes payable, that officer service will be treated as practitioner service.

(9) Subject to sub-paragraph (12), if a member has in total 1 year's officer service or more on the last occasion on which he or she ceases to be a practitioner before his or her pension under the scheme becomes payable that officer service may be treated as practitioner service if it would be more favourable to the member.

(10) Any officer service which is treated as practitioner service by virtue of sub-paragraph (8) or (9) shall include any periods of officer service which are concurrent with periods of practitioner service.

(11) For the purpose of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (8) or (9), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(12) If the member has been a principal practitioner or a practitioner providing piloted services under an agreement between that practitioner and a Health Board or Primary Care NHS Trust, sub-paragraph (1) or (6) will be applied before sub-paragraphs (8) and (9) and—

- (a) sub-paragraphs (8) and (9) will not apply to any officer service that is treated as practitioner service under sub-paragraph (1) or (6); and
- (b) any officer service that is treated as practitioner service under sub-paragraph (1) or (6) will be ignored for the purpose of deciding whether sub-paragraph (8) or (9) applies.

(13) 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.

(14) For the purposes of calculating any benefit in respect of officer service that is treated as practitioner service under sub-paragraph (13), the member's pensionable pay in respect of that officer service will be treated as pensionable earnings.

(15) Where the officer service mentioned in sub-paragraph (8), (9) or (13) 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.

### **Practitioners with benefits from both practitioner and officer service**

12.—(1) A member—

- (a) who has at least two years' qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his or her rights under a personal pension scheme;
- (b) who ceases to be in officer service while continuing in practitioner service; and
- (c) whose officer service is not treated as practitioner service under paragraph 11(6) or 11(9),

shall be entitled to receive a separate pension in respect of his or her officer service.

(2) A member—

- (a) who has at least two years qualifying service or in respect of whom a transfer payment has been made to the scheme in respect of his or her rights under a personal pension scheme; and
- (b) who ceases to be in practitioner service while continuing in officer service,

shall be entitled to receive a separate pension and retirement lump sum in respect of such of his or her pensionable service as is specified in sub-paragraph (3).

(3) The pensionable service specified for the purposes of sub-paragraph (2) is—

- (a) any practitioner service; and
- (b) any officer service which falls to be treated as practitioner service under paragraph 11.

(4) Subject to sub-paragraph (5), the amount of any pension or retirement lump sum which a member is entitled to receive under sub-paragraph (1) or (2) shall be the same as the amount of the pension or retirement lump sum which the member would have been entitled to receive under these Regulations if the member had left pensionable employment on the day on which he or she ceased to be in officer service or, as the case may be, ceased to be in practitioner service.

(5) A member who is entitled to a pension and retirement lump sum under sub-paragraph (2) shall, if it would be more favourable to the member, be treated as having continued in practitioner service until the last day of his or her pensionable employment.

## PART IV

### CONTRIBUTIONS TO THE SCHEME

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

**13.**—(1) In the case of members who are practitioners, regulation D1 (contributions by members) is modified as described in sub-paragraphs (2) to (7).

- (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) Locum practitioners must pay their contributions to their employing authority.
- (7) Contributions paid by locum practitioners under sub-paragraphs (4), (5) or (6) must be paid to the Scottish Ministers no later than the 19th day of the month following that in which they are received from the practitioners.
- (8) 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**

**14.**—(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.

(2) The member's uprated earnings are to be calculated by uprating the member's pensionable earnings in the manner determined by the Scottish Ministers after consulting such professional organisations as they consider appropriate.

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

**15.**—(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**

**16.** 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**

**17.**—(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 DEPENDANTS

#### **Widow's, widower's or surviving civil partner's pension on member's death in pensionable employment**

**18.** 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 or she dies 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**

**19.** 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.

#### **Increased surviving civil partner's pension**

**20.** In the case of a civil partner who made a nomination under regulation G11 (dependant surviving civil partner's pension) or an election under G12 (purchase of surviving civil partner's pension in respect of service prior to 6<sup>th</sup> April 1988) those regulations are modified so that the lump sum payable on the member's retirement will be reduced by 1.96 per cent of uprated earnings for each complete year of practitioner service plus, the relevant daily proportion for each additional day.

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

**21.** 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 or she 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**

**22.**—(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 6, 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 or her earnings were reduced or suspended.

(6) For the purposes of these Regulations for the duration of any pilot scheme—

(a) a member who is providing piloted services or to whom regulation R13(1)(c) applies and who is absent from work by reason of illness or injury shall be treated as a practitioner whether or not his or her name is included on a dental list immediately before the commencement of the pilot scheme; and

(b) a member who is a dental pilot scheme employee and who is absent from work by reason of illness or injury shall be treated as an officer .

(7) Regulations P1, P2 and P3 and the previous sub-paragraphs do not apply in the case of locum practitioners.

PART VIII

RIGHT TO BUY ADDITIONAL BENEFITS

**Right to buy additional benefits**

23.—(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—

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

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—

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

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 3, “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 Scottish Ministers receive 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 11 (officer service treated as practitioner service) will be ignored.

(7) If, when the Scottish Ministers receive 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 3 (if the member is buying additional service) or Table 4 of Schedule 3 (if the member is buying an unreduced retirement lump sum).

(9) The upper limit on a dental practitioner’s pensionable earnings under paragraph 10 (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**

**24.**—(1) In the case of members who are practitioners, regulations N1 (member’s right to transfer accrued rights to benefits to the scheme) and N5 (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 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 10 (limit on pensionable earnings-dental practitioners) will not apply to any increase in a member's pensionable earnings under this paragraph.

## PART X

### CONCURRENT EMPLOYMENT

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

**25.**—(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 or her 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 also participating in the scheme in respect of employment as a practitioner.

(4) For the purposes of paragraph 15 (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 24 (transfers from other pension arrangements).

## PART XI

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

#### **Reduction of pension**

**26.**—(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(12) 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 or her pensionable earnings had he or she 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 or her practitioner service shall be increased by the amount of his previous pay in respect of his or her officer service.

(4) Where regulation S2(10) 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).

(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 or she became so entitled, the practitioner held concurrent pensionable employment as an officer, and the concurrent pensionable employment terminated before he or she became entitled to the pension, previous pay in relation to the practitioner service shall be increased as described in sub-paragraph (7).

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(7) For the purpose of sub-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 regulations S2(12)), whichever is the greater, that is appropriate to the member's last year of pensionable employment immediately before becoming entitled to the pension.

## PART XII

### ACCOUNTS

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

**27.**—(1) In the case of members who are practitioners or non GP providers, regulation V3 (accounts and actuarial reports) is modified as described in this paragraph.

(2) In respect of each financial year, a principal practitioner and a non GP provider shall provide the Contracting Health Board, or someone appointed to act on their behalf, with a certificate of their pensionable earnings based on-

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

no later than one month from the date on which that return was required to be submitted to HM Revenue and Customs.

(3) In respect of each financial year, a Contracting Health Board, or someone appointed to act on their behalf, shall forward a record of-

- (a) all contributions to the scheme made under paragraph 10 in respect of principal practitioners and non GP providers; and
- (b) their pensionable earnings,

to the Scottish Ministers within one month of the end of the financial year immediately following the financial year to which that return relates.

## SCHEDULE 2

PENSION SHARING ON DIVORCE OR NULLITY OF MARRIAGE OR THE  
DISSOLUTION OF A CIVIL PARTNERSHIP**Retirement pension and retirement lump sum**

1. PART E of these Regulations shall be subject to the following modifications—
  - (a) where the shareable rights of a pension debit member are subject to a pension sharing order, the amount of the retirement pension or retirement lump sum payable to a pension debit member shall be reduced in accordance with regulation T5 (pension debits and reduction of benefit); and
  - (b) the amount of the reduction shall be calculated in accordance with guidance issued for this purpose by the Government Actuary.

**Lump sum on death**

2. PART F of these Regulations shall be subject to the following modification—
  - (a) regulation F2 (lump sum when member dies after pension becomes payable) shall, subject to regulation S4, apply in respect of a pension debit member so that—
    - (i) references to the “member’s pension” is the pension reduced in accordance with regulation T5; and
    - (ii) “the member’s retirement lump sum paid under regulation E7” is the retirement lump sum that would have been payable under that Regulation had there been no reduction under regulation T5; and
  - (b) regulation F5 (payment of lump sum) shall apply in respect of a person entitled to a pension credit or a pension credit member, as the case may be, or a pension debit member with the modification that the references in that regulation to “member” shall be references to person entitled to a pension credit or, as the case may be, a pension credit member.

**Widows, widowers and surviving civil partners**

3. PART G (widows, widowers and surviving civil partners), shall be modified so that references to “the pension that would have been payable to the member” in respect of a pension debit member shall be the pension reduced in accordance with regulation T5 to which the pension debit member would have been entitled had he or she become entitled to a pension on the date that he or she died.

**Dependant child allowance**

4. Part H (dependant child allowance) shall be modified so that–
- (a) references to the pension that would have been payable to the member in respect of the death of a pension debit member, means the pension that would have been payable to the pension debit member under Part E had the pension sharing order not applied; and
  - (b) references to “member” do not include a reference to a pension credit member.

**Contracting out and guaranteed minimum pension**

5. Part K shall be modified so that–
- (a) references to the member’s guaranteed minimum shall in respect of a pension debit member subject to a reduction under 10(4) and (5) and 15A of the 1993 Act<sup>(133)</sup> in respect of protected rights or guaranteed minimum pension, be those protected rights or guaranteed pension reduced in accordance with regulation T6 of these Regulations;
  - (b) paragraph (2)(a) of section 68A of the 1993 Act<sup>(134)</sup> (safeguarded rights) applies in relation to the safeguarded rights in respect of a pension credit member; and
  - (c) safeguarded rights shall be identified in the Scheme as being the safeguarded percentage of the pension credit rights derived from the member’s guaranteed minimum.

**Transfer-out arrangements and buy-outs**

6. Part M (transfer-out arrangements and buy-outs) is modified as follows so that–
- (a) accrued benefits in respect of a pension debit member will be subject to a reduction under PART T of these Regulations; and
  - (b) references to “member” does not include a reference to a pension credit member.

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

7. PART Q (Right to buy additional service and unreduced lump sum) is modified so that–
- (a) these Regulations will apply to a pension debit member subject to the limitations in regulation T14; and
  - (b) references to “member” do not include a reference to a pension credit member.

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<sup>(133)</sup> Section 15A was inserted by the 1999 Act, section 32.

<sup>(134)</sup> Section 68A was inserted by the 1999 Act, section 36.

**Members who return to pensionable employment after pension becomes payable**

**8.** PART S (members who return to pensionable employment after pension becomes payable) shall be modified so that references to “pension” and “member’s pension” shall not include a pension credit benefit.

**Offset for crime, fraud or negligence**

**9.** Regulation U5 (offset for crime, fraud or negligence) shall apply to a pension credit member with the following modifications wherever the words to be modified appear:–

- (a) the reference to “member’s” or “member” shall be a reference to pension credit member’s or pension credit member, as the case may be; and
- (b) the reference to “(other than guaranteed minimum pensions and benefits arising out of a transfer payment)” shall be a reference to (other than safeguarded rights).

**10.** Regulation U6 (loss of rights to benefits) shall apply to a pension credit member with the following modifications wherever the words to be modified appear:–

- (a) the reference to “member” shall be a reference to pension credit member; and
- (b) the reference in paragraph (2) to “A guaranteed minimum pension” shall be a reference to Safeguarded rights.

## SCHEDULE 3

PURCHASE OF ADDITIONAL SERVICE AND UNREDUCED RETIREMENT LUMP  
SUM

(Regulation Q3(3))

Table 1

*Paying for additional service by a single payment*

<i>Member's age when the Scottish Ministers receive notice of election</i>	<i>Cost per £100 of remuneration for each year of additional service</i>
(1)	(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
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

DRAFT

<i>Member's age when the Scottish Ministers receive notice of election</i>	<i>Cost per £100 of remuneration for each year of additional service</i>
(1)	(2)
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
68	19.10
69	18.50

Table 2

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

<i>Member's age when the Scottish Ministers receive notice of election</i>	<i>Cost per £100 of remuneration for each year of service in respect of which unreduced retirement lump sum is bought</i>
(1)	(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
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

Table 3

*Paying for additional service by regular additional contributions*

<i>Member's age at next birthday after the Scottish Ministers receive notice of election</i>	<i>Percentage of pensionable pay for each complete year of additional service</i>		
	<i>Birthday to which member has elected to pay contributions</i>		
	<i>55</i>	<i>60</i>	<i>65</i>
20	.61	.50	.36
21	.64	.52	.38
22	.67	.54	.40
23	.70	.56	.42
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
55		4.58	2.08
56		5.77	2.30
57		7.77	2.56
58		12.06	2.92

DRAFT

<i>Member's age at next birthday after the Scottish Ministers receive notice of election</i>	<i>Percentage of pensionable pay for each complete year of additional service</i>		
	<i>Birthday to which member has elected to pay contributions</i>		
	<i>55</i>	<i>60</i>	<i>65</i>
59			3.40
60			4.10
61			5.20
62			6.97
63			10.42

Table 4

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

<i>Member's age at next birthday after the Scottish Ministers receive notice of election</i>	<i>Percentage of pensionable pay for each complete year of additional service in respect of which unreduced retirement lump sum is bought</i>		
	<i>Birthday to which member has elected to pay contributions</i>		
	<i>55</i>	<i>60</i>	<i>65</i>
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
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

## SCHEDULE 4

## REVOCATIONS

(1) <i>Regulations</i>	(2) <i>References</i>	(3) <i>Extent of revocation</i>
The National Health Service Superannuation Scheme (Scotland) Regulations 1995	S.I. 1995/365	The whole Regulations
The National Health Service Superannuation Scheme (Scotland) Amendment Regulations 1997	S.I. 1997/1434	The whole Regulations
The National Health Service Superannuation Scheme (Scotland) Amendment (No.2) Regulations 1997	S.I. 1997/1916	The whole Regulations
The National Health Service Superannuation Scheme (Scotland) Amendment Regulations 1998	S.I. 1998/1593	The whole Regulations
The National Health Service Superannuation Scheme (Scotland) Amendment Regulations 1999	S.I. 1999/443	The whole Regulations
The National Health Service (Superannuation Scheme, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2001	S.S.I. 2001/437	Regulations 2 and 5 to 18
The National Health Service (Scotland) (Superannuation Scheme and Additional Voluntary Contributions) (Pension Sharing on Divorce) Amendment Regulations 2001	S.S.I. 2001/465	Regulation 3 and Schedule 1
The National Health Service Superannuation Scheme (Scotland) Amendment Regulations 2003	S.S.I. 2003/55	The whole Regulations
The National Health Service Superannuation Scheme (Scotland) Amendment (No. 2) Regulations 2003	S.S.I. 2003/270	The whole Regulations
The National Health Service Superannuation Scheme (Scotland) Amendment (No. 3) Regulations 2003	S.S.I. 2003/517	The whole Regulations
The National Health Service (Superannuation Scheme, Injury Benefits and Compensation for Premature Retirement) (Scotland) Amendment Regulations 2005	S.S.I. 2005/???	Regulations 2 and 5 to 29
The National Health Service (Superannuation Scheme, Injury Benefits, Additional Voluntary Contributions and Compensation for Premature Retirement) (Civil Partnership) (Scotland) Amendment Regulations 2005	S.S.I. 2005/???	Regulations 2 and 6 to 36

## EXPLANATORY NOTE

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

These Regulations consolidate, with minor amendments, the provisions of the National Health Service Superannuation Scheme (Scotland) Regulations 1995 (S.I. 1995/365), as amended. They set out the rules for the National Health Service Superannuation Scheme for Scotland.

In addition to the minor and drafting alterations, these Regulations make changes of substance to reflect changes in the law since certain provisions were previously enacted. These changes are as follows:

The Regulations have been amended to reflect the changes to the contracting-out procedures introduced from 6 April 1997 by the Pensions Act 1995 (c.26). For pensionable service after 6 April 1997 rights in relation to guaranteed minimum pensions have been replaced by rights under section 9(2B) of the Pensions Schemes Act 1993 (c.48). A definition of Section 9(2B) has been introduced into Regulation A2 and the new Regulation K5 sets out provision on residual liability for guaranteed minimum pensions and for Section 9(2B) rights. The Regulations have also been amended to include reference to Section 9(2B) rights in addition to guaranteed minimum pensions, where appropriate.

The requirement for mental health officers to have worked full time to accrue the benefits under Regulation R3 is removed by removing the whole time requirement from the definition of mental health officers at Regulation R3(16). Regulation Q3(4) also clarifies current practice for part-time members purchasing previous whole-time service.

Tables of Derivations and Destinations have been prepared identifying individual regulations in these consolidated Regulations with the equivalent provisions in the superseded Regulations and vice versa. Copies of the Tables may be obtained from the Scottish Public Pensions Agency (Policy Branch), 7 Tweedside Park, Tweedbank, Galashiels, TD1 3TE. The Tables have been prepared to assist readers of the Regulations and do not have any legal effect.