

## 2005 No. 1986

### PENSIONS

#### The Financial Assistance Scheme Regulations 2005

Made - - - - - 19th July 2005

Coming into force in accordance with regulation 1

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Whereas a draft of this instrument was laid before Parliament in accordance with section 316(2)(n) of the Pensions Act 2004(a) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 286, 315(2) and 318(1), (4)(a) and (5) of that Act(b), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

## PART 1 GENERAL

### Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Assistance Scheme Regulations 2005 and shall come into force—

- (a) for the purposes of this regulation, regulation 4 and paragraphs 4, 5, 15 and 16 of Schedule 1 in so far as they relate to regulation 4, for the purpose only of the making of regulations, on the day after the day on which these Regulations are made;
- (b) in so far as these Regulations apply in relation to civil partnerships, on 5th December 2005; and
- (c) for all other purposes, on 1st September 2005.

(2) These Regulations extend to Northern Ireland.

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(a) 2004 c. 35.

(b) Section 286 is modified in relation to multi-employer schemes by S.I. 2005/441. Section 318(1) is cited because of the meaning ascribed to the words “modifications”, “prescribed” and “regulations”.

## Reg. 2

## Interpretation

## 2.—(1) In these Regulations—

“the Act” means the Pensions Act 2004 and references to a numbered section are, unless the context otherwise requires, to a section of the Act(a);

“the Northern Ireland Order” means the Pensions (Northern Ireland) Order 2005(b) and references to a numbered Article are, unless the context otherwise requires, to an Article of that Order;

“the 1993 Act” means the Pension Schemes Act 1993(c);

“the 1995 Act” means the Pensions Act 1995(d);

“the FSMA” means the Financial Services and Markets Act 2000(e);

“the ICTA” means the Income and Corporation Taxes Act 1988(f);

▶<sup>1</sup>“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(g);◀

“the Commissioners of HMRC” means the Commissioners of Her Majesty’s Revenue and Customs;

“annual payment” means the amount payable to a beneficiary in respect of each year determined in accordance with ▶<sup>3</sup>regulation 17, 17C or 17E and Schedule 2, 3 or 4◀;

▶<sup>2</sup>“asset share” in respect of a person means the assets available to discharge the liability of the scheme in respect of that person as determined in accordance with regulation 22(2), or, where it applies, regulation 28(1);◀

▶<sup>2</sup>“beneficiary” means—

(a) a qualifying member or, after that qualifying member’s death, the survivor and surviving dependants of that qualifying member; and

(b) any person entitled to a payment in accordance with regulation 17G(1);◀

▶<sup>2</sup>“calculation date” means the last day of the month in which the scheme manager instructs the trustees or managers of a qualifying pension scheme to obtain a valuation under regulation 22;◀

▶<sup>3</sup>◀

▶<sup>3</sup>“employment” means any trade, business, profession, office or vocation;◀

▶<sup>4</sup>“general level of prices” means, except where the revaluation percentage falls to be determined under regulation 17(13A) or 17A(13A) or paragraph 3(3C) or (3ZD) or 4(10) or (13C) of Schedule 2, the general level of prices in Great Britain determined in such manner as the Secretary of State thinks fit, and the Secretary of State shall publish from time to time the manner in which the general level of prices is to be determined;◀

▶<sup>5</sup>“ill health payment” means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17A and ▶<sup>2</sup>Schedules 2A, 5 and 6;◀◀

▶<sup>3</sup>“indexation date” means—

(a) the 1st January next falling after a beneficiary first becomes entitled to ▶<sup>2</sup>a payment under regulation 17G, a payment under regulation 17H,◀ an annual payment or an ill health payment; and;

(b) each subsequent 1st January during that beneficiary’s lifetime;◀

“initial payment” means a payment made to a beneficiary in accordance with regulation 18;

▶<sup>5</sup>“interim ill health payment” means a payment made to a beneficiary in accordance with regulation 17B;

<sup>1</sup>Defns. of “the FAS Information ...” substituted by reg. 3 of S.I. 2006/3370 as from 16.12.06.

<sup>2</sup>Words substituted and inserted in defns. of “annual payment”, “ill health payment”, “indexation date”; defns. of “asset share” & “calculation date” inserted and defn. of “beneficiary” substituted by reg. 4(a)-(f) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Defn. of “certification date” omitted & defns. of “employment” & “indexation date” inserted in reg. 2(1) by regs. 4(a)(i)-(vi) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Defn. of “general level of prices” added to reg. 2(1) by reg. 3 of S.I. 2011/839 as from 31.3.11.

<sup>5</sup>Defns. of “ill health payment”, “interim ill health payment” & “interim pension” inserted by reg. 5(1)(a) & (b) of S.I. 2008/1903 as from 17.7.08.

(a) The Act is modified in its application to partially guaranteed pension schemes by S.I. 2005/277, in its application to multi-employer schemes by S.I. 2005/441 and in its application to hybrid schemes by S.I. 2005/449.

(b) S.I. 2005/255 (N.I.1). The Northern Ireland Order is modified in its application to partially guaranteed pension schemes by S.R. 2005/55, in its application to hybrid schemes by S.R. 2005/84 and in its application to multi-employer schemes by S.R. 2005/91.

(c) 1993 c. 48.

(d) 1995 c. 26.

(e) 2000 c. 8.

(f) 1988 c. 1.

(g) S.I. 2005/2189, amended by S.I. 2005/3256.

“interim pension” has the meaning given in paragraph 2 of Schedule 2 as modified by paragraph 10 of that Schedule;◀

▶<sup>1</sup>“multi-employer scheme” means an occupational pension scheme in relation to which there is or has been—

- (a) a principal employer and at least one employer (who is not the principal employer in relation to that scheme); or
- (b) more than one employer,

at the same time;◀

▶<sup>1</sup>◀

▶<sup>2</sup>“notional pension” means the annual rate of annuity determined in accordance with regulation 27(1)(a);

“the Ombudsman” means the PPF Ombudsman or any person appointed under section 210(1) (deputy PPF Ombudsmen) to act as a deputy to the PPF Ombudsman;◀

▶<sup>3</sup>“partner” means a person of either sex who was not married to, or in a civil partnership with, the qualifying member but who was living with that member—

- (a) as if that person and the qualifying member were husband and wife; or
- (b) in the case of two adults of the same sex, as if they were civil partners,

and, for the purposes of these Regulations, two adults of the same sex are to be regarded as living together as civil partners if they would have been regarded as living together as husband and wife were they instead two adults of the opposite sex;

“person credit member” has the meaning given by section 124(1) of the 1995 Act;◀

▶<sup>4</sup>“principle employer” has the meaning given in regulation 12(6);◀

▶<sup>3</sup>“qualifying course” means a full time educational or vocational course at a recognised educational establishment where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course exceeds 12 hours per week in normal term time, and shall include any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;◀

“qualifying member” shall be construed in accordance with regulation 15;

“qualifying pension scheme” shall be construed in accordance with regulation 9;

▶<sup>5</sup>“relevant accounts” for the purposes of identifying and valuing the assets of a scheme, means the audited accounts for the scheme which—

- (a) show a true and fair view of—
  - (i) the financial transactions of the scheme during the period to which the accounts relate (“the accounting period”);
  - (ii) the amount and disposition of the assets at the end of the accounting period; and
  - (iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits after the end of the accounting period;
- (b) are in such manner and form as the scheme manager may request;
- (c) include a report by the auditor in writing as to whether or not in the auditor's opinion the requirements in paragraphs (a) and (b) above are satisfied; and
- (d) are prepared in respect of the period ending with the calculation date;◀

▶<sup>4</sup>“relevant public authority” has the meaning given in section 307(4) or, as the case may be, Article 280(4);◀

“scheme manager” shall be construed in accordance with regulation 5;

▶<sup>5</sup>“scheme rules” means the rules of the qualifying pension scheme;◀

▶<sup>6</sup>“scheme's pension liabilities”, in respect of a member of a qualifying pension scheme, means the liabilities of the scheme to, or in respect of, the member in respect of pensions or other benefits (including increases in pensions);◀

<sup>1</sup>Defns. of “multi-employer scheme” substituted & “notification period” omitted by reg. 3 of S.I. 2006/3370 as from 16.12.06.

<sup>2</sup>Defns. of “notional pension” & “the Ombudsman” inserted by reg. 4(g) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Defn. of “partner” & words inserted in defns. of “qualifying course” inserted in reg. 2(1) by regs. 4(a)(vi)-(vii) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Defns. of “principle employer” & “relevant public authority” inserted by reg. 3 of S.I. 2006/3370 as from 16.12.06.

<sup>5</sup>Defns. of “relevant accounts” & “scheme rules” inserted in reg. 2 by reg. 4(h)-(i) of S.I. 2010/1149 as from 2.4.10.

<sup>6</sup>Defn. of “scheme's pension liabilities” inserted by art. 4(1)(a) of S.I. 2010/1145 as from 31.3.10.

**Reg. 2**

<sup>1</sup>Defns. of “shared initial payment” & “surviving dependant” inserted in reg. 2(1) by reg. 4(a)(viii) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Defn. of “survivor” substituted & para. (1AB) inserted in reg. 2 by reg. 4(a)(ix) & (b) & word substituted in reg. 2(1B)(b) by reg. 7(1)(a) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Defns. of “survivor national pension”, “transfer notice” & “valuation actuary” inserted in reg. 2 by reg. 4(j)-(l) of S.I. 2010/1149 as from 2.4.10.

<sup>4</sup>Reg. 2(1A) & (1B) inserted by reg. 5 of S.I. 2008/1432 as from 4.6.08 for certain cases see reg. 8 *ibid.*

<sup>5</sup>Word substituted in reg. 2(1B)(b) by reg. 7(1)(a) of S.I. 2009/1851 as from 10.7.09.

▶<sup>1</sup>“shared initial payment” means a payment which is not an initial payment and which is the amount payable to a survivor of a qualifying member who was a party to a polygamous marriage in accordance with regulation 18(4B) and paragraph 5(6A) of Schedule 2;

“surviving dependant” shall be construed in accordance with regulation 16B;◀

▶<sup>2</sup>“survivor” shall be construed in accordance with regulation 16B;◀

▶<sup>3</sup>“survivor national pension” means the annual rate of annuity determined in accordance with regulation 27(1)(c);◀

“tax approved scheme” means a scheme which is approved or was formerly approved under section 590 (conditions for approval of retirement benefit schemes) or 591(a) (discretionary approval) of the ICTA or in respect of which an application for such approval has been duly made but has not been determined;

▶<sup>3</sup>“transfer notice” means the notice given under regulation 29;◀

“trustees or managers” shall be construed in accordance with the definition in section 124(1) of the 1995 Act ▶<sup>3</sup>;

“valuation actuary” has the meaning given in regulation 22(5);◀

and other expressions have the meaning given to them in the Act or, as the case may be, in the Northern Ireland Order.

▶<sup>4</sup>(1A) In these Regulations, “normal retirement age” means, subject to paragraph (1B), in relation to a member of an occupational pension scheme, the age specified in the rules of that scheme at which that member will normally retire.◀

▶<sup>2</sup>(1AB) In paragraph (1A), “the rules of that scheme” means the rules of the occupational pension scheme on the date on which benefits ceased to accrue to that member.◀

▶<sup>4</sup>(1B) Where the normal retirement age—

(a) determined in accordance with paragraph (1A) is—

(i) more than 65, that age shall be 65;

(ii) less than 60, that age shall be 60 except for the purposes of paragraph 2(3)(a) of Schedule 2;

(b) cannot be determined in accordance with paragraph (1A) from the rules of the qualifying pension scheme; that age shall be such age as the scheme manager shall determine having regard to the rules of that scheme and to such other information as ▶<sup>5</sup>it◀ considers relevant.◀

(2) References in these Regulations to provisions of the 1993 Act, the 1995 Act, the Welfare Reform and Pensions Act 1999(b) and to the Social Security Contributions and Benefits Act 1992(c) include references to the provisions in force in Northern Ireland corresponding to those provisions.

(3) In these Regulations, “insurance company” means—

(a) a person who has permission under Part 4 of the FSMA to effect or carry out contracts of long-term insurance; or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance,

and in this paragraph, “contracts of long-term insurance” means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(d).

(a) Sections 590 and 591 are amended by the Finance Act 1988 (c. 39), section 35 and Schedule 3, the Finance Act 1989 (c. 26), sections 75 and 187 and Schedules 6 and 17, the Finance Act 1991 (c. 31), sections 34, 36 and 123 and Schedule 19, the Finance Act 1994 (c. 9), section 107, the Finance Act 1995 (c. 4), section 59 and the Finance Act 1999 (c. 16), section 79 and Schedule 10.

(b) 1999 c. 30.

(c) 1992 c. 4.

(d) S.I. 2001/544.

(4) Paragraph (3) shall be read with—

- (a) section 22 of the FSMA (regulated activities);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

(5)-(6) ►<sup>1</sup>◄

(7) ►<sup>2</sup>Subject to ►<sup>3</sup>paragraphs (8) and (8A)◄, in these Regulations,◄, “appointed representative” means—

- (a) a person whose name, address and appointment by a beneficiary or by a person who believes himself to be a beneficiary (“►<sup>2</sup>possible◄ beneficiary”) for the purposes of—
  - (i) notifying the scheme manager of the details prescribed in regulation 14(1) and (3); or
  - (ii) receiving payments made under these Regulations,
 have been notified to the scheme manager in a document signed by the beneficiary or ►<sup>2</sup>possible◄ beneficiary in question or by his legal representative and whose appointment has been consented to by the scheme manager; or
- (b) where a beneficiary or a ►<sup>2</sup>possible◄ beneficiary—
  - (i) dies; or
  - (ii) is otherwise incapable of acting for himself,
 and there is no person appointed under sub-paragraph (a) in respect of that beneficiary or ►<sup>2</sup>possible◄ beneficiary, a person who has been appointed by the scheme manager to act as the beneficiary’s or the ►<sup>2</sup>possible◄ beneficiary’s representative for the purposes of these Regulations.

►<sup>4</sup>(8) If a beneficiary or a possible beneficiary appoints a person under sub-paragraph (a) of paragraph (7), and then—

- (a) dies, or
- (b) becomes otherwise incapable of acting for himself,

the person appointed under sub-paragraph (a) of that paragraph is deemed to have been appointed under sub-paragraph (b) of that paragraph.

►<sup>3</sup>(8A) Subject to paragraph (8B), where a beneficiary or a possible beneficiary is a child aged less than 18, the scheme manager may regard—

- (a) a parent of the child;
- (b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989(a) in relation to the child;
- (c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995(b) in relation to the child; or
- (d) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995(c) in relation to the child,

as the appointed representative of that child.

(8B) Where—

- (a) no person referred to in paragraph (8A)(a) to (d) is known to the scheme manager, the scheme manager may appoint a person to act as the appointed representative of a child;
- (b) more than one person referred to in paragraph (8A)(a) to (d) wishes to act as the child’s representative for the purposes of these Regulations, the scheme manager may appoint one of those persons as the appointed representative of that child.◄

<sup>1</sup>Paras. (5) & (6) of reg. 2 omitted by reg. 3 of S.I. 2007/3581 as from 19.12.07.

<sup>2</sup>Words substituted in para. 7 of reg. 2 by reg. 4(2)(a) & (b) of S.I. 2005/3256 as from 24.11.05.

<sup>3</sup>Words substituted in reg. 2(7) & paras. (8A) & (8B) inserted by reg. 4(c)-(e) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Paras. (8) & (9) inserted into reg. 2 by reg. 4(2)(c) of S.I. 2005/3256 as from 24.11.05.

(a) 1989 c. 41.

(b) 1995 c. 36.

(c) S.I. 1995/755 (N.1.2).

## Regs. 2-3

(9) For the purposes of these Regulations, a person is “terminally ill” at any time if at that time he suffers from a progressive disease and his death, in consequence of that disease, can reasonably be expected within six months.◀

<sup>1</sup>Para. (10) inserted in reg. 2 by reg. 4(e) of S.I. 2009/1851 as from 10.7.09.

▶<sup>1</sup>(10) For the purposes of these Regulations, a qualifying member who has died was “a party to a polygamous marriage” if, immediately before the member died, the member—

- (a) was a party to a marriage entered into under a law which permits polygamy; and
- (b) had more than one spouse.◀

**Commencement of winding up**

**3.—**(1) For the purposes of these Regulations, the time when an occupational pension scheme begins to be wound up shall be determined in accordance with this regulation.

(2) Subject to paragraphs (3) to (6), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

- (a) either—
  - (i) at such time as the rules provide that it does so; or
  - (ii) if the rules make no provision as to that time, at such time as the trustees or managers determine that the scheme shall begin to be wound up; or
- (b) as soon as there are no members who are in pensionable service under the scheme,

whichever is the later.

(3) Where the rules of the scheme require or permit the scheme to be wound up but the trustees or managers determine in pursuance of section 38 of the 1995 Act(a) or otherwise that the scheme is not to be wound up for the time being, then for the purposes of paragraph (2), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees’ or managers’ determination, that provision shall be disregarded.

(4) Where under the rules of the scheme, any person other than the trustees or managers may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (2)(a)(ii) and (3) to the trustees’ or managers’ determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person’s determination, as a reference to his determination.

(5) Paragraph (4) applies where such power is vested in the trustees or managers jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees or managers.

(6) Where—

- (a) the scheme manager is satisfied that the scheme began to wind up during the period prescribed in regulation 9(1)(b); but
- (b) the exact date on which the scheme began to wind up cannot be determined,

the scheme begins to be wound up on such date, within that period, as the scheme manager determines.

(7) Where—

- (a) a scheme is wound up in pursuance—
  - (i) of an order by the Determinations Panel on behalf of the Regulator under section 11 of the 1995 Act(b) (see section 9); or

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(a) Section 38 is amended by the Welfare Reform and Pensions Act 1999, Schedule 12, paragraph 50.

(b) Section 11 is amended by section 22 of the Act.

- (ii) of an order of a court; and
- (b) the order makes provision as to the time at which the scheme is to begin to be wound up,

the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

**Application of Parts I and II of the Act**

4.—(1) The provisions of Parts 1 and 2 of the Act specified in paragraph (2) apply for the purposes of these Regulations with the modifications prescribed in Schedule 1.

(2) The specified provisions are—

- (a) section 68 (power for the Regulator to collect information relevant to the Board of the Pension Protection Fund);
- (b) section 85 (power to enable the Regulator to disclose restricted information to the Board);
- ▶<sup>1</sup>(ba) section 113 (investment of funds);
- (bb) section 114 (investment principles);
- (bc) section 115 (borrowing);
- (bd) section 117 (administration levy);
- (be) section 119 (annual reports to Secretary of State);
- (bf) section 134 (directions);◀
- ▶<sup>2</sup>(bg) sections 135 and 136 (provisions restricting winding up, discharge of liabilities etc and provisions regarding validation of contraventions of section 135);
- (bh) section 161 (effect of Board assuming responsibility for a scheme);
- (bi) section 165 (guaranteed minimum pensions);◀
- (c) section 168 (administration of compensation payable by the Board);
- (d) sections 190 to 204 ▶<sup>2</sup>◀ (information gathering powers of the Board and provisions relating to disclosure of information by the Board); ▶<sup>1</sup>◀
- ▶<sup>1</sup>(da) Schedule 5 (the Board of the Pension Protection Fund); and◀
- ▶<sup>2</sup>(db) Schedule 6 (transfer of property, rights and liabilities to the board); and◀
- (e) Schedule 8 (permitted disclosures by the Board to facilitate exercise of functions).

<sup>1</sup>Para. (ba) substituted, word 'and' omitted from para. (d) & para. (da) inserted in reg. 4(2) by regs. 5(a) & (b)(i) & (ii) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Paras. (2)(bg)-(bi) & (db) inserted & words omitted in paras. (2)(d) & (5) in reg. 4 by reg. 5(a)-(d) of S.I. 1149/2010 as from 2.4.10.

(3) Subject to paragraph (5), the provisions of Parts 1 and 2 of the Act which are applied by paragraph (1), shall apply to Northern Ireland for the purposes of these Regulations, with the prescribed modifications, as if those provisions extended to Northern Ireland.

(4) Section 88(4) shall also apply to Northern Ireland for the purposes of these Regulations as if that provision extended to Northern Ireland.

(5) Sections 197 to ▶<sup>2</sup>◀ shall apply to Northern Ireland only in so far as they relate to disclosure or provision of information—

- (a) by or to the scheme manager;
- (b) by any person who receives information directly or indirectly from the scheme manager;
- (c) by any person for the purpose of enabling or assisting the scheme manager to exercise ▶<sup>3</sup>its◀ functions; and
- (d) by trustees or managers of occupational pension schemes in respect of matters relating to these Regulations.

<sup>3</sup>Words in reg. 4(5)(c) substituted by reg. 6(1)(a) of S.I. 2009/1851 as from 10.7.09.

(6) In so far as this regulation extends provisions to Northern Ireland—

- (a) a person may not be required under or by virtue of those provisions to produce, disclose or permit the inspection of protected items within the meaning given in section 311(2) to (4); and

- (b) if a person claims a lien on a document, its production under any provision made by, or by virtue of, those provisions, does not affect the lien.

## PART 2

## ESTABLISHMENT OF THE FINANCIAL ASSISTANCE SCHEME

**Scheme manager**

**5.**—(1) The financial assistance scheme established by these Regulations shall be managed by the ►<sup>1</sup>Board of the Pension Protection Fund◄.

►<sup>1</sup>(2) References in these Regulations to the scheme manager are to the Board of the Pension Protection Fund acting in its capacity as manager of the financial assistance scheme.

(3) The Secretary of State shall pay a grant to the scheme manager in connection with its functions conferred by these Regulations.

(4) The scheme manager may not use the grant paid by the Secretary of State in accordance with paragraph (3) to make any payments which are required to be made to any beneficiary in accordance with these Regulations.◄

**5A.** ►<sup>1</sup>◄

►<sup>2</sup>**Financial and other arrangements to enable or assist the Board of the Pension Protection Fund to carry out its functions in relation to the financial assistance scheme**

**6.**—(1) The Secretary of State—

(a) shall make available such amounts as are necessary to enable—

(i) the scheme manager; or

(ii) a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to these Regulations) to pay instalments of payments to beneficiaries, to make any payments which are required to be made in accordance with these Regulations; and

(b) may make such arrangements as the Secretary of State considers appropriate to enable or assist the scheme manager to carry out its functions in relation to the financial assistance scheme.

(2) The arrangements in paragraph (1)(b) may, in particular, include the determination of any actuarial factor which is to be applied by the scheme manager when determining the amount of any payment in accordance with Schedule 2 or 2A.

**Use of information**

**6A.**—(1) Information held by the Secretary of State or the Department for Social Development in Northern Ireland for the purposes of any of their functions relating to social security or the financial assistance scheme may be disclosed to—

(a) the scheme manager; or

(b) to a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to these Regulations) and who is authorised by the scheme manager to receive and use such information,

for any use connected with, or incidental to, the exercise of the scheme manager's functions relating to the financial assistance scheme.

(2) Information obtained by the scheme manager, or a person referred to in paragraph (1)(b), in the exercise of the scheme manager's functions in relation to the financial assistance scheme—

<sup>1</sup>Words in regs. 5(1) & para. (2)(a)-(b) substituted for 5(2)-(4) & reg. 5A omitted by regs. 6(1)(a)-(b) & (2) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Heading to & reg. 6 substituted & heading to & reg. 6A inserted by reg. 8 of S.I. 2009/1851 as from 10.7.09.

- (a) may be disclosed to the Secretary of State or the Department for Social Development in Northern Ireland in any case in which disclosure is for the purpose of enabling or assisting the scheme manager to exercise its functions; and
- (b) shall be disclosed to the Secretary of State or the Department for Social Development in Northern Ireland on request by the Secretary of State or, as the case may be, that Department in any case in which disclosure is for the purpose of enabling or assisting the Secretary of State or, as the case may be, the Department to exercise their functions relating to the financial assistance scheme.◀

### Annual reports

7.—(1) The Secretary of State must prepare a report on the financial assistance scheme for each financial year.

(2) Each report must deal with the operation of the financial assistance scheme in the financial year for which it is prepared and in particular—

- (a) the number of persons who have received payments under these Regulations; and
- (b) the total amount of those payments.

(3) The Secretary of State must lay before each House of Parliament a copy of every report prepared by him under this regulation.

(4) In this regulation, “financial year” means—

- (a) the period beginning on 1st September 2005 and ending on 31st March 2006; and
- (b) each successive period of 12 months.

### Delegation

8. The scheme manager may make arrangements for any of his functions conferred by, or by virtue of, these Regulations to be exercised, in accordance with those arrangements, by a person on his behalf.

## PART 3

### QUALIFYING PENSION SCHEMES

#### Qualifying pension schemes

9.—(1) An occupational pension scheme shall be a qualifying pension scheme for the purposes of these Regulations where—

- (a) immediately before the time when the scheme began to wind up, it was neither a money purchase scheme nor a scheme of a description prescribed in regulation 10;
- (b) ▶<sup>1</sup>except where paragraph (1B) ▶<sup>2</sup>or (1D)◀ applies,◀ the scheme began to wind up during the period beginning on 1st January 1997 and ending on 5th April 2005;
- ▶<sup>3</sup>(c) either—
  - (i) the employer in relation to that scheme satisfies the condition in regulation 11;
  - (ii) in relation to a multi-employer scheme, the condition in regulation 12 is satisfied;
  - (iii) in relation to a scheme which is not a multi-employer scheme and which began to wind up before 6th April 1997, the condition in regulation 12A(1) is satisfied;
  - (iv) in relation to a multi-employer scheme which began to wind up before 6th April 1997, the condition in regulation 12B(1) or (2) is satisfied;

<sup>1</sup>Words inserted in reg. 9(1)(b) & sub-paras. (1B) & (1C) added by reg. 2(2) & (3) of S.I. 2008/3069 as from 23.12.08.

<sup>2</sup>Words in reg. 9(1)(b) inserted by reg. 2(2) of S.I. 2014/837 as from 28.3.14.

<sup>3</sup>Reg. 9(1)(c) substituted by reg. 7(1)(a) of S.I. 2008/1903 as from 17.7.08.

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- (v) in relation to a scheme which is not a multi-employer scheme and which began to wind up on or after 6th April 1997 but before 11th June 2003, the condition in regulation 12A(2) is satisfied; or
- (vi) in relation to a multi-employer scheme which began to wind up on or after 6th April 1997, the condition in regulation 12B(3) or (4) is satisfied;◀

<sup>1</sup>Sub-para. (ca) & (1A) inserted by reg. 4(1)(a)-(c) of S.I. 2007/3581 as from 19.12.07.

<sup>2</sup>Words in sub-para (ca) inserted & substituted by reg. 7(1)(a)-(c) of S.I. 2008/1903 as from 17.7.08.

- ▶<sup>1</sup>(ca) ▶<sup>2</sup>where paragraph (i) or (ii) of sub-paragraph (c) applies,◀ there was, in the opinion of the scheme manager, a relevant link between the commencement of the winding up of the scheme and the fact that the relevant condition mentioned in ▶<sup>2</sup>those paragraphs◀ is satisfied; and◀
- (d) the details prescribed in regulation 14 have been notified to the scheme manager by a person, in the form and manner and before the date prescribed in that regulation.

▶<sup>1</sup>(1A) The relevant link mentioned in paragraph (1)(ca) is deemed to be established in relation to any employer in respect of which the relevant condition mentioned in paragraph (1)(c) is satisfied before 1st January 2009.◀

<sup>3</sup>Words inserted in reg. 9(1)(b) & sub-paras. (1B) & (1C) added by reg. 2(2) & (3) of S.I. 2008/3069 as from 23.12.08.

▶<sup>3</sup>(1B) This paragraph applies where–

- (a) the scheme began to wind up during the period beginning on 6th April 2005 and ending on 22nd December 2008;
- (b) paragraph (i) or (ii) of paragraph (1)(c)(a) applies by virtue of an insolvency event which occurred before 6th April 2005; and
- (c) there has not been an insolvency event in relation to the relevant employer which would be a qualifying insolvency event for the purposes of section 127(b) or Article 111(c) (duty to assume responsibility for schemes following insolvency event) if the scheme were an eligible scheme.

(1C) In paragraph (1B)–

“eligible scheme has the meaning given in section 126(d) or, as the case may be, Article 110(e) (eligible schemes);

“relevant employer” means the employer in relation to the scheme or, in relation to a multi-employer scheme, any employer or employers in relation to the scheme.◀

<sup>4</sup>Words in reg. 9(1)(b) and para. (1C) inserted by reg. (2) & (3) of S.I. 2014/837 as from 28.3.14.

▶<sup>4</sup>(1D) This paragraph applies where–

- (a) the scheme began to wind up during the period beginning on 23rd December 2008 and ending with the day before the day on which the Financial Assistance Scheme (Qualifying Pension Scheme Amendments) Regulations 2014 come into force;
- (b) paragraph (i) or (ii) of paragraph (1)(c) applies by virtue of an insolvency event which occurred before 6th April 2005;
- (c) there has not been an insolvency event in relation to the relevant employer which would be a qualifying insolvency event for the purposes of section 127 or Article 111 (duty to assume responsibility for schemes following insolvency event) if the scheme were an eligible scheme; and
- (d) the relevant employer ceased to be an employer in relation to the scheme prior to 10th June 2011.

(1E) In paragraph (1D), “relevant employer” means the person who employed persons in the description of category of employment to which the scheme relates or related immediately before the time at which the scheme ceased to have any active members.

(a) Paragraph (1)(c) was substituted by S.I. 2008/1903.

(b) Section 127 is modified in its application to partially guaranteed pension schemes by S.I. 2005/277 and in its application to multi-employer schemes by S.I. 2005/441 (as amended by S.I. 2005/993 and 2005/2113).

(c) Article 111 is modified in its application to partially guaranteed pension schemes by S.R. 2005/55 and in its application to multi-employer schemes by S.R. 2005/91 (as amended by S.R. 2005/194 and 2005/357).

(d) Section 126 is modified in its application to multi-employer schemes by S.I. 2005/441 (as amended by S.I. 2005/993 and 2005/2113).

(e) Article 110 is modified in its application to multi-employer schemes by S.R. 2005/91 (as amended by S.R. 2005/194 and 2005/357).

(1F) Where a scheme is a qualifying person scheme for the purposes of these Regulations by virtue of paragraph (1D), that scheme is not an eligible scheme for the purposes of section 126(1)(b) or, as the case may be, Article 110(1)(b) (eligible schemes). ◀

(2) The following shall be treated as separate schemes for the purposes of these Regulations—

- (a) in relation to an occupational pension scheme which is not a tax approved scheme but contains one or more sections which, by virtue of section 611(3) of the ICTA(a) (definition of “retirement benefits scheme”), are treated by the Commissioners of HMRC as a tax approved scheme, those sections which are so treated;
- (b) sections of sectionalised multi-employer schemes as defined for the purposes of regulation 12,

and references in these Regulations to schemes shall be construed accordingly.

#### Other schemes which are not qualifying pension schemes

10. The following are descriptions of schemes for the purposes of regulation 9(1)(a)—

- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
- (b) a scheme which is made under section 7 of the Superannuation Act 1972(b) or under Article 9 of the Superannuation (Northern Ireland) Order 1972(c) (superannuation of persons employed in local government service etc.) and provides pensions to persons employed in local government service;
- (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987(d) (power to provide for pensions for Members of the House of Commons etc.);
- (d) a scheme which is established under section 48 of the Northern Ireland Act 1998(e) (pensions of members), or which was established under Part 2 of the Ministerial Salaries and Members’ Pensions Act (Northern Ireland) 1965(f) or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976(g);
- (e) a scheme in respect of which a relevant public authority has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
- (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the ICTA but which is neither a tax approved scheme nor a relevant statutory scheme within the meaning of section 611A of that Act(h) (definition of “relevant statutory scheme”);
- (g) a scheme—
  - (i) which has been categorised before 18th April 2005, by the Commissioners of Inland Revenue, and on or after that date, by the Commissioners of HMRC, for the purposes of its approval as a centralised scheme for non-associated employers;

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(a) Section 611(3) is amended by the Finance Act 1999, section 79 and Schedule 10 and by the Finance Act 2000 (c. 17), section 61 and Schedule 13.

(b) 1972 c. 11.

(c) S.I. 1972/1073 (N.I. 10).

(d) 1987 c. 45.

(e) 1998 c. 47.

(f) 1965 c. 18 (N.I.).

(g) S.I. 1976/1779.

(h) Section 611A is inserted by the Finance Act 1989 (c. 26), section 75 and Schedule 6, paragraph 15 and amended by the Finance Act 1999, section 52(1) and Schedule 5, paragraph 5.

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- (ii) which is not contracted-out in accordance with section 9 of the 1993 Act(a); and
- (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;
- (h) a scheme—
  - (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
  - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (i) a scheme with such a superannuation fund as is mentioned in section 615(6) of the ICTA(b) (exemption from tax in respect of certain pensions);
- (j) a scheme which does not have its main place of administration registered in the United Kingdom;
- (k) a scheme with fewer than two members;

<sup>1</sup>Reg. 10(1) substituted & para. (m) inserted by reg. 4(3) of S.I. 2007/3581 as from 19.12.07.

- ▶<sup>1</sup>(1) a scheme with fewer than 12 members where all the members are trustees of the scheme and either—
  - (i) the provisions of the scheme provided that any decision made by the trustees is made by the unanimous agreement of the trustees who are member of the scheme; or
  - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act (power to appoint independent trustees) and is registered in the register maintained by the Pensions Regulator(c) in accordance with regulations made under subsection (4) of that section;
- (m) a scheme with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either—
  - (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made by the unanimous agreement of the directors of that company who are members of the scheme; or
  - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Pensions Regulator in accordance with regulations made under subsection (4) of that section.◀

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(a) Section 9 is amended by the 1995 Act, section 136(3) and (4), Schedule 5, paragraphs 21 and 24 and by the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2), Schedule 1, paragraph 35.

(b) Section 615(6) has effect in relation to trust based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom. It was amended by the Finance Act 1999, section 79 and Schedule 10.

(c) Section 7(2) of the Pensions Act 2004 (“the 2004 Act”) provides that “the Authority” in Part 1 of the Pensions Act 1995 (c. 26) (which includes section 23) means the Pensions Regulator. The Pensions Regulator was established by section 1 of the 2004 Act.

**Condition to be satisfied by employer**

11.—(1) The condition to be satisfied by the employer for the purposes of ►<sup>1</sup>regulation 9(1)(c)(i)◄ where the scheme is not a multi-employer scheme, is that an insolvency event has occurred in relation to the employer ►<sup>2</sup>◄.

<sup>1</sup>Words substituted in regs. 11(1), 12(1) & (2) by regs. 7(2) & (3) of S.I. 2008/1903 as from 17.7.08.

(2) The reference to the employer in paragraph (1)–

- (a) ►<sup>3</sup>is to the◄ person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, ►<sup>3</sup>is to the◄ person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time at which the scheme ceased to have any active members.

<sup>2</sup>Words omitted in regs. 11(1), 12(1) & (2) by reg. 4(4) of S.I. 2007/3581 as from 19.12.07.  
<sup>3</sup>Words substituted in reg. 11(2) by reg. 4 of S.I. 2006/3370 as from 16.12.06.

**Condition to be satisfied: multi-employer schemes**

12.—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of ►<sup>1</sup>regulation 9(1)(c)(ii)◄ is that an insolvency event has occurred on or before ►<sup>2</sup>◄–

- <sup>4</sup>(a) in relation to the principal employer in that section; or
- (b) where either there is no principal employer in that section or, where the principal employer is not an employer, there has been no insolvency event in relation to such a principal employer in that section–
  - (i) in relation to the employer in that section; or
  - (ii) where there is more than one employer in that section, in relation to all the employers in that section.◄

<sup>4</sup>Words substituted, inserted & deleted in reg. 12(1)-(4) by reg. 4 of S.I. 2006/3370 as from 16.12.06.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of ►<sup>1</sup>regulation 9(1)(c)(ii)◄ is that an insolvency event has occurred ►<sup>2</sup>◄–

- (a) in relation to the principal employer; or
- <sup>4</sup>(b) where either there is no principal employer or, where the principal employer is not an employer, there has been no insolvency event in relation to such a principal employer–
  - (i) in relation to the employer; or
  - (ii) where there is more than one employer, in relation to all the employers.◄

(3) The references to the employer ►<sup>4</sup>(other than in the phrase “principal employer”)◄ in paragraph (1) ►<sup>4</sup>◄–

- (a) ►<sup>4</sup>include every person◄ who employed persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to that section.

(4) The references to the employer ►<sup>4</sup>(other than in the phrase “principal employer”)◄ in paragraph (2) ►<sup>4</sup>◄–

- (a) ►<sup>4</sup>include every person◄ who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to it.

## Regs. 12-12B

<sup>1</sup>Words substituted, inserted & deleted in reg. 12 paras. (5) & (6) by reg. 4 of S.I. 2006/3370 as from 16.12.06.

(5) The references to the principal employer ►<sup>1</sup>(who may or may not be an employer within the meaning of paragraph (3) or (4) in paragraphs (1)◀ and (2) are to ►<sup>1</sup>the person◀ who was the principal employer immediately before the time when the scheme began to wind up.

(6) In this regulation—

“principal employer” means ►<sup>1</sup>the person◀ who—

- (a) is the principal employer for the purposes of the scheme, or of a section of a sectionalised multi-employer scheme, in accordance with the rules of the occupational pension scheme; or
- (b) has power to act on behalf of all the employers in the scheme, or in a section of a sectionalised multi-employer scheme, in relation to the rules of that scheme;

“sectionalised multi-employer scheme” means a multi-employer scheme which is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply or applied to different employers or groups of employers (whether or not more than one section applies or applied to any particular employer or groups including any particular employer);
- (b) any contributions payable or paid to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer’s section (or if more than one section applies or applied to the employer, to the section which is, or was, appropriate in respect of the employment in question); and
- (c) a specified part or proportion of the assets of the scheme is, or was, attributable to each section of the scheme and cannot or could not be used for the purpose of any other section of the scheme.

<sup>2</sup>Regs. 12A & 12B inserted by reg. 7(4) of S.I. 2008/1903 as from 17.7.08.

### ►<sup>2</sup>Employer-related condition

**12A.**—(1) The condition to be satisfied for the purposes of regulation 9(1)(c)(iii) is that the employer discharged the debt due under section 144 of the 1993 Act or that no debt was due under that section when the scheme began to wind up.

(2) The condition to be satisfied for the purposes of regulation 9(1)(c)(v) is that the employer discharged the debt due under section 75 of the 1995 Act or that no debt was due under that section when the scheme began to wind up.

(3) The scheme manager may treat the condition in paragraph (1) or (2) as being satisfied where—

- (a) ►<sup>3</sup>it◀ is satisfied that an appropriate proportion of the debt was discharged or is likely to be discharged; and
- (b) in ►<sup>3</sup>its◀ opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, has not been discharged.

(4) In this regulation the reference to the employer shall be interpreted in accordance with regulation 11(2).

<sup>3</sup>Words substituted in reg. 12A(3)(a) & (b) by regs. 7(1)(a) & 2(a) of S.I. 2009/1851 as from 10.7.09.

### Employer-related condition: multi-employer schemes

**12B.**—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

- (a) the debt due under section 144 of the 1993 Act was discharged by all the employers in that section of the scheme; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

- (a) the debt due under section 144 of the 1993 Act was discharged by all the employers to which the scheme relates; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(3) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—

- (a) the debt due under section 75 of the 1995 Act was discharged by all the employers in that section of the scheme; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(4) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—

- (a) the debt due under section 75 of the 1995 Act was discharged by all the employers to which the scheme relates; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(5) The scheme manager may treat any condition in paragraphs (1) to (4) as being satisfied where—

- (a) <sup>1</sup>it is satisfied that an appropriate proportion of the debt was, or is likely to be, discharged; and
- (b) in <sup>1</sup>its opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, or a proportion of that debt has not been discharged.

<sup>1</sup>Words substituted in reg. 12B(5)(a) & (b) by reg. 7(1)(a) & (2)(a) of S.I. 2009/1851 as from 10.7.09.

(6) In this regulation—

- (a) the references to the employer in paragraphs (1) and (3) shall be interpreted in accordance with regulation 12(3);
- (b) the references to the employer in paragraphs (2) and (4) shall be interpreted in accordance with regulation 12(4); and
- (c) “sectionalised multi-employer scheme” has the meaning given by regulation 12(6).<sup>2</sup>

### Insolvency events

13.—(1) “Insolvency event” shall, for the purposes of regulations 11 and 12, be interpreted in accordance with—

- (a) section 121(2) to (4) (other than subsection (3)(f) of that section); or
- (b) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article),

and the following provisions of this regulation.

(2) Where the employer in relation to an occupational pension scheme is a person specified in paragraph (3), an insolvency event shall be treated as having occurred in relation to that employer for the purposes of regulations 11 and 12 where the scheme manager is satisfied that—

- (a) that employer was unlikely to continue as a going concern; and

<sup>2</sup>

<sup>2</sup>Reg. 13(2)(b) omitted by reg. 4(5)(a) of S.I. 2007/3581 as from 19.12.07.

(3) The persons specified in this paragraph are—

- (a) a public body—
  - (i) in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur; and

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- (ii) which is not the employer in relation to an occupational pension scheme in respect of which a relevant public authority has either—
  - (aa) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme or any member of the scheme; or
  - (bb) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;
- (b) a charity (as construed in accordance with the Charities Act 1993<sup>(a)</sup> or the Charities Act (Northern Ireland) 1964<sup>(b)</sup>) which is not a company or other body corporate; or
- (c) a trade union within the meaning given in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(c)</sup> or in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992<sup>(d)</sup> in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur.

<sup>1</sup>Reg. 12(3A) inserted by reg. 4(4) of S.I. 2006/3370 as from 16.12.06.

<sup>2</sup>Word substituted in reg. 13(3A) by reg. 7(1)(a) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Words in paras. (3A) & (4) omitted by regs. 4(4) & (5)(b) of S.I. 2007/3581 as from 19.12.07.

►<sup>1</sup>(3A) Where the scheme manager is satisfied that the employer in relation to an occupational pension scheme is unlikely to continue as a going concern, the scheme manager may treat an insolvency event as having occurred in relation to that employer for the purposes of regulations 11 and 12 where ►<sup>2</sup>it◀ is satisfied that ►<sup>3</sup>◀ all of the following circumstances applied to that employer—

- (a) no insolvency event referred to elsewhere in this regulation has occurred or is likely to occur in relation to the employer;
- (b) the value of the assets of the employer is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; and
- (c) the employer is unable to pay its debts as they fall due or have fallen due.◀

(4) An insolvency event also occurs for the purposes of regulations 11 and 12 where any of the following events occur ►<sup>3</sup>◀—

- (a) in relation to a company—
  - (i) where an administration order is made—
    - (aa) by the court in relation to the company under, or by virtue of any enactment which applies, Part 2 of the 1986 Act (administration orders) (with or without modification); or
    - (bb) by the High Court in relation to the company under, or by virtue of any statutory provision which applies, Part 3 of the Insolvency (Northern Ireland) Order (administration orders) (with or without modification);
  - (ii) where a resolution is passed for a voluntary winding up of the company with a declaration of solvency under section 89 of the 1986 Act or under Article 75 of the Insolvency (Northern Ireland) Order; or
  - (iii) where notice is published in the Gazette that the company has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985<sup>(e)</sup> or Article 603 or 603A of the Companies (Northern Ireland) Order 1986<sup>(f)</sup>;
- (b) in relation to a relevant body, where—
  - (i) any of the events referred to—
    - (aa) in section 121(3) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the 1986 Act or by or under any other enactment; or

(a) 1993 c. 10.

(b) 1964 c. 33 (N.I.).

(c) 1992 c. 52.

(d) S.I. 1992/807 (N.I. 5).

(e) 1985 c. 6. Section 652A is inserted by the Deregulation and Contracting Out Act 1994 (c. 40), section 13(1) and Schedule 5, paragraph 2.

(f) S.I. 1986/1032 (N.I. 6). Article 603A is inserted by the Deregulation and Contracting Out Act 1994, section 13(2) and Schedule 6, paragraph 2.

- (bb) in Article 105(3)(a) (insolvency events) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the Insolvency (Northern Ireland) Order or by or under any other statutory provision; or
- (ii) an administration order is made by the court in respect of the relevant body by virtue of any enactment which applies Part 2 of the 1986 Act or Part 3 of the Insolvency (Northern Ireland) Order (with or without modification);
- (c) in relation to a limited liability partnership, where notice has been published in the Gazette that the partnership has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985(b) or Article 603 or 603A of the Companies (Northern Ireland) Order 1986(c);
- (d) in relation to a building society, where there is dissolution by consent of the members under section 87 of the Building Societies Act 1986 (d) (dissolution by consent);
- (e) in relation to a friendly society, where there is dissolution by consent of the members under section 20 of the Friendly Societies Act 1992(e) (dissolution by consent); and
- (f) in relation to an industrial and provident society, where there is dissolution by consent of the members under section 58 of the Industrial and Provident Societies Act 1965(f) or section 67 of the Industrial and Provident Societies Act (Northern Ireland) 1969(g) (instrument of dissolution).

►<sup>1</sup>(4A) An insolvency event also occurs for the purposes of regulations 11 and 12 where the scheme manager is satisfied that ►<sup>2</sup>◀—

- (a) an event has occurred in any jurisdiction outside the United Kingdom, in relation to an employer, that substantially corresponds to any event referred to in—
  - (i) section 121(2) to (4) to (4) (other than subsection (3)(f) of that section),
  - (ii) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article), and
  - (iii) paragraph (4) of this regulation; and
- (b) that employer is unlikely to continue as a going concern.◀

►<sup>2</sup>(4B) The scheme manager may also, for the purposes of regulations 11 and 12, treat an insolvency event as having occurred in relation to the employer in relation to an occupational pension scheme where—

- (a) the trustees of such a scheme entered into a binding agreement, with the employer against whom it arose, to compromise the debt that arose under section 75 of the 1995 Act, and
- (b) the scheme manager is satisfied that had that agreement not been entered into—
  - (i) the value of that employer's assets would have been less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or
  - (ii) the employer would have been unable to pay its debts as they fell due.◀

(5) In this regulation, a reference to Part 2 of the 1986 Act (administration orders) shall, in so far as it relates to a company or society listed in section 249(1) of the

(a) See also Article 105(12).

(b) Sections 652 and 652A are applied to limited liability partnerships by the Limited Liability Partnerships Regulations 2001 (S.I. 2001/1090).

(c) Articles 603 and 603A are applied to limited liability partnerships by the Limited Liability Partnerships Regulations (Northern Ireland) 2004 (S.R. 2004/307).

(d) 1986 c. 53.

(e) 1992 c. 40.

(f) 1965 c. 12.

(g) 1969 c. 24 (N.I.).

<sup>1</sup>Reg. 13(4A) inserted by reg. 4(5) of S.I. 2006/3370 as from 16.12.06.

<sup>2</sup>Words omitted in reg. 13(4A) & para. (4B) added by regs. 4(4) & (5)(c) of S.I. 2007/3851 as from 19.12.07.

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Enterprise Act 2002(a) (special administration regimes), have effect as if it referred to Part 2 of the 1986 Act as it had effect immediately before the coming into force of section 248 of the Enterprise Act 2002 (replacement of Part 2 of the 1986 Act).

(6) In this regulation—

“the 1986 Act” means the Insolvency Act 1986(b);

“the Insolvency (Northern Ireland) Order” means the Insolvency (Northern Ireland) Order 1989(c);

“administration order” means an order whereby the management of the company or relevant body, as the case may be, is placed in the hands of a person appointed by the court or, in Northern Ireland, by the High Court;

▶<sup>1</sup>“employer” includes a person who is a principal employer for the purposes of regulation 12:◀

“the Gazette” means, in respect of companies or limited liability partnerships registered—

(a) in England and Wales, the London Gazette;

(b) in Scotland, the Edinburgh Gazette; or

(c) in Northern Ireland, the Belfast Gazette;

“public body” means a government department or any non-departmental public body established by—

(a) in relation to Great Britain, an Act of Parliament or by a statutory instrument made under an Act of Parliament to perform functions conferred on it under, or by virtue of, that Act or instrument or any other Act or instrument;

(b) in relation to Northern Ireland, a statutory provision to perform functions conferred on it under that statutory provision or any other such statutory provision;

“relevant body” means—

(a) a credit union within the meaning given in section 31(1) of the Credit Unions Act 1979(d) or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985(e) (interpretation);

(b) a limited liability partnership within the meaning given in section 57(6) or Article 53(6) (partnerships and limited liability partnerships);

(c) a building society within the meaning given in section 119 of the Building Societies Act 1986 (interpretation);

(d) a person who has permission to act under Part 4 of the FSMA (permission to carry out regulated activities);

(e) the society of Lloyd’s and Lloyd’s members who have permission under Part 19 of the FSMA (Lloyd’s);

(f) a friendly society within the meaning given in the Friendly Societies Act 1992; or

(g) a society which is registered as an industrial and provident society under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954(f).

<sup>1</sup>Defn. of “employer” inserted by reg. 4(6) of S.I. 2006/3370 as from 16.12.06.

(a) 2002 c. 40.

(b) 1986 c. 45.

(c) S.I. 1989/2405 (N.I. 19).

(d) 1979 c. 34.

(e) S.I. 1985/1205 (N.I. 12).

(f) 1954 c. 33 (N.I.). Section 1(f) is amended by the Northern Ireland (Modification of Enactments No.1) Order 1999 (S.I. 1999/663), Article 2(1) and Schedule 1, paragraph 9(1).

**Notification of details**

**14.**—(1) Where an occupational pension scheme is winding up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme;
- (b) the pension scheme registration number which is allocated to that scheme in the register;
- (c) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme relates or has related;
- (d) the name and address of at least one trustee of the scheme.

(2) The persons who may supply the details in paragraph (1) are—

- (a) any trustee of the scheme including a trustee appointed by the Regulator under section 7 or 23(1) of the 1995 Act<sup>(a)</sup>;
- (b) a member of the scheme or his appointed representative;
- (c) a surviving spouse or civil partner of a member of the scheme who has died; or
- (d) any professional adviser in relation to the scheme.

(3) Where an occupational pension scheme has wound up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme; and
- (b) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme related.

(4) The persons who may supply the details in paragraph (3) are—

- (a) a former trustee or manager of the scheme;
- (b) a former member of the scheme or his appointed representative;
- (c) a surviving ►<sup>1</sup>partner,◀ spouse or civil partner of a former member of the scheme who has died;
- (d) any former professional adviser in relation to the scheme; or
- (e) any insurance company which is paying annuities to former members of that scheme.

<sup>1</sup>Words inserted in para. (4)(c) & substituted in para. (5)(b)(ii) of reg. 14 & regs. 14A & 14B inserted by regs. 7(1)(a), 9 & 10 of S.I. 2009/1851 as from 10.7.09.

(5) The details in paragraphs (1) and (3) must—

- (a) be notified in writing; and
- (b) have been notified to the scheme manager—
  - (i) no earlier than 1st September 2005; but
  - (ii) by no later than 28th February 2006 or by no later than such later date by which the scheme manager has indicated that ►<sup>1</sup>it◀ may accept notification of those details in the case of any particular scheme.

**►<sup>1</sup>Working with qualifying pension schemes**

**14A.**—(1) The scheme manager may manage, or make arrangements in relation to the management of, the transfer of any property, rights and liabilities of qualifying pension schemes which have not been fully wound up.

(2) The power conferred by paragraph (1) includes, but is not limited to—

- (a) the preparation of plans or other similar preparatory documentation;
- (b) undertaking work calculated to assist in ensuring any transfer is carried out effectively and efficiently;
- (c) undertaking work to assess the effect of any action taken in relation to qualifying pension schemes; and

(a) Section 7 is amended by the Act, Schedule 12, paragraph 36. Section 23 is substituted by section 36(3) of the Act.

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- (d) the inspection, examination and auditing of data or other information relating to qualifying pension schemes.

**Payments in relation to administration or other costs**

**14B.**—(1) Where the scheme manager is satisfied that—

- (a) the trustees or managers of a qualifying pension scheme are not able to pay or meet administration or other costs which have been incurred or which are likely to be incurred in relation to that scheme from the assets of the scheme; and
- (b) paying or meeting those administration or other costs is necessary in order to—
- (i) assist the scheme in winding-up;
- (ii) keep any reduction in the scheme's assets to a minimum; or
- (iii) increase the scheme's assets,

the scheme manager may, on an application by the trustees or managers, pay to them such amounts as it considers appropriate for the purpose of enabling the trustees or managers to pay or meet those costs.

(2) The scheme manager may make a payment under paragraph (1) on such terms as the scheme manager thinks fit. ◀

## PART 4

## QUALIFYING MEMBERS

**Qualifying members**

<sup>1</sup>Reg. 15(1) substituted and para. (3A) inserted by reg. 6(a)-(b) of S.I. 2010/1149/ as from 2.4.10.

**15.**—<sup>1</sup>(1) A member or a former member of a qualifying pension scheme is a qualifying member of that scheme for the purposes of—

- (a) section 286A(a) restriction on purchase of annuities); and
- (b) these Regulations,

where the conditions in paragraphs (2) to (3A) are satisfied in relation to that member or former member or would have been satisfied in relation to that member or former member had that member or former member not died before the coming into force of these Regulations. ◀

(2) The condition in this paragraph is that the member or former member must have an accrued right to a benefit under the scheme.

(3) The condition in this paragraph is that the member or former member—

- (a) was a member of the qualifying pension scheme immediately before the scheme began to wind up; or
- (b) was not a member of the scheme at that time but became a pension credit member of the scheme on or after the day on which the scheme began to wind up.

<sup>1</sup>(3A) The condition in this paragraph is that the scheme's pension liabilities have not been satisfied in full in respect of that member. ◀

(4) <sup>2</sup>◀

(5) <sup>3</sup>Except for the purposes of regulations 17A and 17B, ◀ a person who is not a member or a former member of a qualifying pension scheme is to be regarded as a qualifying member of such a scheme for the purposes of these Regulations where—

- (a) he was entitled to a present payment from a qualifying pension scheme immediately before the scheme began to wind up;

<sup>2</sup>Para. 15(4) omitted by reg. 5(a) & (b) of S.I. 2007/3581 as from 19.12.07.

<sup>3</sup>Words inserted in reg. 15(5) by reg. 8 of S.I. 2008/1903 as from 17.7.08.

(a) Section 286A was inserted by section 125(1) of the Pensions Act 2008 (c. 30).

- (b) that payment was attributable to the pensionable service of a former member of that scheme who has died;
- ▶<sup>1</sup>(c) the scheme’s pension liabilities in respect of that person have not been satisfied in full◀▶<sup>2</sup>◀

**15A.-16.** ▶<sup>3</sup>◀

▶<sup>4</sup>**Survivors**

**16A.**—(1) Subject to paragraphs (2) and (3), a person is a survivor of a qualifying member who has died where that person is the qualifying member’s widow, widower or surviving civil partner.

(2) Where the conditions in paragraph (4) are satisfied—

- (a) the qualifying member’s surviving partner is a survivor of that qualifying member; and
- (b) where the qualifying member leaves a widow, widower or surviving civil partner, that widow, widower or surviving civil partner is not a survivor of that qualifying member.

(3) Where a person is regarded as a qualifying member by virtue of regulation 15(5) that person is not a survivor of the former member referred to in regulation 15(5)(b).

(4) The conditions for the purposes of paragraph (2) are that—

- (a) immediately before the qualifying member’s death, the qualifying member had a partner (“the surviving partner”);
- (b) the rules of the qualifying pension scheme include provision (whether discretionary or otherwise) to pay a survivor’s pension to a partner of the qualifying member;
- (c) the scheme manager is satisfied that the surviving partner was living with the qualifying member immediately before the qualifying member’s death; and
- (d) either—
  - (i) the qualifying member provided the scheme manager with a signed written notice nominating the surviving partner as that member’s survivor;
  - (ii) the qualifying member provided the trustees or managers of the qualifying pension scheme with a valid nomination in accordance with the rules of the qualifying pension scheme to pay a survivor’s pension to the surviving partner; or
  - (iii) where the qualifying member did not leave a widow, widower or surviving civil partner, the scheme manager is satisfied that the qualifying member and the surviving partner were financially interdependent or the surviving partner was financially dependent on the qualifying member.

(5) For the purposes of enabling the scheme manager to be satisfied or not satisfied that the conditions in paragraphs (4)(c) and (d)(ii) or (iii) are met, the surviving partner must provide evidence that those conditions are met to the scheme manager.

**Surviving dependants**

**16B.**—(1) Subject to paragraph (2), a child of the family of a qualifying member is a surviving dependant of that qualifying member for the purposes of these Regulations where—

- (a) the child was financially dependent on the member and is aged—
  - (i) less than 18; or
  - (ii) less than 23 and is—
    - (aa) attending a qualifying course; or

<sup>1</sup>Reg. 15(5)(c) substituted by art. 4(1)(b) of S.I. 2010/1145 as from 31.3.10.  
<sup>2</sup>Word “and” & sub-para. (d) omitted by reg. 5(c) of S.I. 2007/3581 as from 19.12.07.  
<sup>3</sup>Regs. 15A to 16 deleted by reg. 7 of S.I. 1149/2010 as from 2.4.10.  
<sup>4</sup>Regs. 16A & 16B inserted by reg. 11 of S.I. 2009/1851 as from 10.7.09.

## Regs. 16B-17

(bb) incapable to engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995(a); and

(b) the scheme manager is provided with—

- (i) in the case of a natural child or unborn child, a birth certificate demonstrating that the child was the natural child of the member;
- (ii) in the case of an adopted child, the adoption certificate demonstrating that the child was the adopted child of the member;
- (iii) in the case of any other child in respect of whom sub-paragraph (a) is satisfied, evidence demonstrating to the satisfaction of the scheme manager that the child was a dependent child of the member immediately before the qualifying member's death.

(2) Where a person is regarded as a qualifying member by virtue of regulation 15(5) that person is not a surviving dependant of the former member referred to in regulation 15(5)(b).◀

## PART 5

## ANNUAL AND INITIAL PAYMENTS

## Annual payments

<sup>1</sup>Reg. 17(1) substituted by reg. 6(1) of S.I. 2007/3581 as from 19.12.07.

<sup>2</sup>Words substituted in reg. 17(1) and deleted in paras. (2), (3) & (3A) by reg. 8(a)-(b) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Words inserted in paras. (2) & (3) of reg. 17 by reg. 4(2) & (3) of S.I. 2009/792 as from 27.3.09.

<sup>4</sup>Words inserted in reg. 17(2) & (3) by reg. 9 of S.I. 2008/1903 as from 17.7.08.

<sup>5</sup>In reg. 17 words substituted in (2)(b) & paras. (3A) & (3B) inserted by reg. 6 of S.I. 2008/1432 as from 4.6.08 for certain cases, see reg. 8 *ibid* for when to apply.

<sup>6</sup>Words omitted, inserted & substituted in reg. 17(3) by reg. 4(3) of S.I. 2005/3256 as from 24.11.05.

17.—<sup>1</sup>(1)<sup>2</sup>Schedules 2, 3 and 4 make◀ provision for the determination of the amount of annual payments to be paid to, or in respect of, qualifying members of qualifying pension schemes including provision for a cap to be imposed on such amounts.◀

(2) Except where paragraph (3) <sup>3</sup>, (3A) or (3C) or regulation 17C◀ applies <sup>4</sup>or where the qualifying member is receiving an ill health payment under regulation 17A(1) or an interim ill health payment under regulation 17B(2)◀, a qualifying member of a qualifying pension scheme shall be entitled to an annual payment <sup>2</sup>◀ from—

(a) 14th May 2004; or

(b) the day on which the qualifying member attains <sup>5</sup>normal retirement age◀, whichever is the later.

*Reg. 17(2) as it stands without amendments by reg. 6(1)(a) of S.I. 2008/1432, is reproduced below for use where the transitional provision is reg. 8 *ibid* applies:—*

(2) Except where paragraph (3) applies, a qualifying member of a qualifying pension scheme shall be entitled to an annual payment determined in accordance with Schedule 2 from—

(a) 14th May 2004; or

(b) the day on which the qualifying member attains the age of 65,

whichever is the later.

(3) <sup>4</sup>Except where the qualifying member is receiving <sup>3</sup>a payment under paragraph (3C) or◀ an ill health payment under regulation 17A(1) or an interim ill health payment under regulation 17B(2) <sup>2</sup>or an annual payment under regulation 17C◀,◀ where the scheme manager is satisfied that a qualifying member is terminally ill <sup>6</sup>◀, that member shall be entitled to an annual payment <sup>2</sup>◀ from the day on which the scheme manager is first notified that that member may be terminally ill.

<sup>5</sup>(3A) Where a person is regarded as a qualifying member under regulation 15(5)—

(a) that member shall be entitled to an annual payment <sup>2</sup>◀ from—

(i) 14th May 2004; or

(a) 1995 c. 50. As amended, in relation to Northern Ireland, by S.I. 2008/1117.

(ii) the date on which he became entitled to a present payment from the qualifying pension scheme;  
whichever is the later; and

- (b) <sup>1</sup>it shall be payable in instalments of the annual payment which would have been payable to that member shall cease to be payable from the date on which that member would have ceased to be entitled to the payment referred to in regulation 15(5)(a) in accordance with the rules of the qualifying pension scheme.

<sup>1</sup>Words omitted & substituted in paras. (3A)(b) & (3B) by regs. 7(1) & 17(2)(a) of S.I. 2009/1851 as from 10.7.09.

(3B) Where the date referred to in paragraph (3A)(b) cannot be determined from the rules of the qualifying pension scheme, the date on which annual payments shall cease to be payable shall be such date as the scheme manager shall determine having regard to the rules of that scheme and to such other information as <sup>1</sup>it considers relevant.

<sup>2</sup>(3C) Except where regulation 17C applies, a qualifying member shall be entitled to an annual payment <sup>3</sup>where—

<sup>2</sup>Paras. (3C)-(3E) inserted in reg. 17 by reg. 4(4) & (5) of S.I. 2009/792 as from 27.3.09.

- (a) that member makes a written request for such a payment;
- (b) the member is—
- (i) not receiving any payments under these Regulations; or
- (ii) receiving only payments for a survivor by virtue of paragraph (4), regulation 17A(3), 17B(2)(b) or 18(4)(a); and
- (c) the scheme manager is satisfied that the member meets the conditions in paragraph (3D).

<sup>3</sup>Words deleted in para. (3C) by reg. 8(b) of S.I. 2010/1149 as from 2.4.10.

(3D) The condition in this paragraph are that the qualifying member—

- (a) has attained the age of 55;
- (b) suffers from a progressive disease and as a consequence—
- (i) cannot reasonably be expected to die within six months; and
- (ii) can reasonably be expected to die within five years;
- (c) is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; and
- (d) is not regarded as a qualifying member by virtue of regulation 15(5).

(3E) The date from which a qualifying member is entitled to an annual payment under paragraph (3C) is the date on which the scheme manager receives the written request mentioned in paragraph (3C)(a).

(4) <sup>4</sup>Except where regulation 17A(3) applies <sup>5</sup>and subject to paragraph (4C), a survivor of a qualifying member of a qualifying pension scheme shall be entitled to an annual payment <sup>6</sup>from—

<sup>4</sup>Words inserted in reg. 17(4) by reg. 9(c) of S.I. 2008/1903 as from 17.7.08.

- (a) 14th May 2004; or
- (b) the day after the day on which that qualifying member died,

<sup>5</sup>Words in para. (4) & paras. (4A)-(4D) inserted by reg. 12(a) & (b) of S.I. 2009/1851 as from 10.7.09.

whichever is the later.

<sup>5</sup>(4A) Except where regulation 17A(3) applies and subject to paragraph (4C), a surviving dependant of a qualifying member of a qualifying pension scheme shall be entitled to an annual payment <sup>6</sup>from—

<sup>6</sup>Words deleted in reg. 17(4) and (4A) by reg. 8(a) of S.I. 2010/1149 as from 2.4.10.

- (a) 14 May 2004;
- (b) the day after the day on which that qualifying member died; or
- (c) where a surviving dependant is an unborn child on the day on which the qualifying member died, the day on which that surviving dependant is born,

whichever is the latest.

(4B) An annual payment payable to a surviving dependant under paragraph (4A) shall continue, subject to paragraph (5B), until the surviving dependant—

(a) Regulations 17A and 17B were inserted by, and regulation 18(4) was substituted by, S.I. 2008/1903.

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- (a) where neither sub-paragraph (b) nor (c) applies, attains the age of 18;
- (b) where the surviving dependant is attending a qualifying course—
  - (i) attains the age of 23; or
  - (ii) leaves the qualifying course, whichever is the earlier; or
- (c) where the surviving dependant is incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995, attains the age of 23.

(4C) A survivor or surviving dependant of a person who is regarded as a qualifying member under regulation 15(5) is not entitled to an annual payment as a survivor or surviving dependant of that qualifying member.

(4D) Where an annual payment ceases to be payable to a surviving dependant as a result of paragraph (4B)(a) or (b)(ii) and the surviving dependant subsequently—

- (a) attends a qualifying course; or
- (b) becomes incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995,

before attaining the age of 23, that surviving dependant shall be entitled to an annual payment <sup>1</sup> from the day on which the scheme manager is satisfied that the surviving dependant satisfies sub-paragraph (a) or (b) until a day determined in accordance with paragraph (4B).

<sup>1</sup>Words deleted in reg. 17(4D), inserted in 17(5A) by reg. 8(a)-(d) of S.I. 1149/2010 as from 2.4.10.

(5) The year in respect of which the annual payment is to be made shall be the year starting on the day on which a <sup>2</sup>an instalment of the annual payment or, as the case may be, an initial payment, is first payable to a beneficiary by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

<sup>2</sup>Reg. 17(5B) & words in paras. (5), (5A)(a) & (b) & (6) substituted & omitted by regs. 7(1)(a), 12(a)-(d) & 17(2)(a) & (b) & (3)(a) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>(5A) In determining the amount of annual payment that is payable to, or in respect of, a beneficiary <sup>1</sup>entitled to an annual payment in accordance with Schedule 2 for any previous year or years (“arrears payable”)—

<sup>3</sup>Reg. 17(5A) substituted by reg. 6 of S.I. 2006/3370 as from 16.12.06.

- (a) the total of all <sup>2</sup>instalments of an initial payment that have been made to, or in respect of, the beneficiary for any previous year or years is to be deducted from the amount of arrears payable to that beneficiary; and
- (b) if the total of all such <sup>2</sup>instalments is greater than that amount of arrears payable—
  - (i) the amount to be paid in respect of arrears payable is nil, and
  - (ii) the difference between that total and the amount of arrears payable is recoverable from the beneficiary in accordance with regulation 7 of the FAS Information and Payments Regulations (recovery of overpayments).

<sup>2</sup>(5B) Where a beneficiary dies or otherwise ceases to be entitled to an annual payment—

- (a) subject to sub-paragraph (b), any further instalments of an annual payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
- (b) any instalment of an annual payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an annual payment shall be payable.

(6) <sup>4</sup>Subject to <sup>5</sup>paragraphs (3A)(b) <sup>2</sup>and (5B), and regulation 17C(8) and paragraphs 2A and 4A of Schedule 2, annual payments which are payable to a <sup>2</sup>qualifying member or survivor under this Part shall continue for life.

<sup>4</sup>Words substituted in reg. 17(6) by reg. 4(3)(c) & (d) of S.I. 2005/3256 as from 24.11.05.

<sup>5</sup>Words in reg. 17(6) substituted by reg. 6(1)(c) of S.I. 2008/1432 as from 4.6.08.

*Reg. 17(b) as it stands without amendment by reg. 6(1)(c) of S.I. 2008/1432, of S.I. 2008/1432, is reproduced below for use where the transitional provision in reg. 8 *ibid* applies:-*

(6) <sup>4</sup>Subject to paragraph (5B), annual payments which are payable to a beneficiary under this Part shall continue for life.

►<sup>1</sup>(7) Paragraphs 7 and 8 of Schedule 2 provide for the circumstances in which an annual payment is not payable under this Part. ◀

<sup>1</sup>Para. (7) inserted by reg. 4(3)d) of S.I. 2005/3256 as from 24.11.05.

►<sup>2</sup>(8) Subject to paragraphs (16) and (17), and until such time, if any, as regulation 17E applies, where a beneficiary is entitled to an annual payment in accordance with this regulation, that annual payment shall be determined in accordance with—

<sup>2</sup>Paras. (8) to (18) added by reg. 8(d) of S.I. 2010/1149 as from 2.4.10.

- (a) Schedule 2, where none of sub-paragraphs (b) to (k) nor paragraph (16) or (17) applies;
- (b) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the revalued notional pension in relation to the qualifying member; and
    - (bb) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),
 is higher than the amount of the annual payment to which that qualifying member would be entitled in accordance with Schedule 2 if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of that Schedule were omitted;
- (c) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant; and
  - (iii) the qualifying member in respect of the beneficiary was entitled to an annual payment in accordance with Schedule 3 immediately before the death of the member;
- (d) Schedule 3, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
  - (iv) the qualifying member died—
    - (aa) before becoming entitled to an annual payment; and
    - (bb) on or after the calculation date; and
  - (v) the sum of—
    - (aa) one half of the revalued notional pension in relation to the qualifying member;
    - (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and

- (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),  
is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraphs 2(3A) to (3G) and 5(6A) of that Schedule were omitted;
- (e) Schedule 3, where—
- (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
  - (iv) the qualifying member died—
    - (aa) after becoming entitled to an annual payment; and
    - (bb) on or after the calculation date,  
but before the day on which the transfer notice was given;
  - (v) the sum of—
    - (aa) one half of the revalued notional pension in relation to the qualifying member;
    - (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and
    - (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),  
is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraphs 2(3A) to (3G) and 5(6A) of that Schedule were omitted;
- (f) Schedule 3, where—
- (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) neither the qualifying member in respect of the beneficiary nor the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

- (iv) the qualifying member died before the calculation date; and
- (v) the sum of—
  - (aa) the survivor notional pension determined in respect of the beneficiary; and
  - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,  
is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3G) of that Schedule were omitted;
- (g) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the notional pension in relation to that qualifying member; and
    - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,  
is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;
- (h) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (bb) died before the calculation date; and
  - (iv) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,  
is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;
- (i) Schedule 4, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant who was receiving a present payment from the qualifying pension scheme under scheme rules as a result of the death of a qualifying member before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

- (iii) the sum of–
  - (aa) the survivor notional pension determined in respect of the beneficiary; and
  - (bb) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,
    - is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted;
- (j) Schedule 4, where–
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary–
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (bb) died on or after the calculation date, but before the day on which the transfer notice was given; and
  - (iv) the sum of–
    - (aa) the proportion of the notional pension which relates to the beneficiary;
    - (bb) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the date on which the qualifying member died; and
    - (cc) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the qualifying member died until the day on which the transfer notice is given,
      - is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted; or
- (k) Schedule 4, where–
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary–
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (bb) died on or after the day on which the transfer notice was given; and
  - (iv) the sum of–
    - (aa) the proportion of the notional pension which relates to the beneficiary;
    - (bb) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice was given; and
    - (cc) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died,

is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3A) to (3E) of that Schedule were omitted.

(9) For the purposes of paragraphs (8), (16) and (17)–

(a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations–

- (i) the qualifying member was entitled to a payment under the scheme rules; and
- (ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and
- (iii) the qualifying member’s entitlement became payable, as a result of paragraphs (i) and (ii) being satisfied,

(b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.

(10) In paragraph (8)(b)(iii), (d)(v) and (e)(v), “the revalued notional pension” means the aggregate of–

- (a) the notional pension; and
- (b) the revaluation amount for the period–
  - (i) beginning on the calculation date; and
  - (ii) ending on the earliest of–
    - (aa) the day on which the beneficiary becomes entitled to an annual payment;
    - (bb) the day on which the beneficiary began to receive a present payment from the scheme; ►<sup>1</sup>◄
    - (cc) the day on which the qualifying member died►<sup>1</sup>; or
    - (dd) 30th March 2011, provided that the calculation date falls before 30th March 2011; and
- (c) in any case where the calculation date falls on or before 30th March 2011 and the day determined in accordance with paragraphs (i) to (iii) falls after 30th March 2011, the revaluation amount for the period beginning on 31st March 2011 and ending on–
  - (i) the day on which the beneficiary became entitled to an annual payment;
  - (ii) the day on which the beneficiary began to receive a present payment from the scheme; or
  - (iii) the day on which the qualifying member died,
 whichever is the earliest.◄

<sup>1</sup>In reg. 17, words in paras. (10)(b)(ii)(bb) deleted, paras. (11)(a)(i) & words in paras. (11) substituted & paras. (10)(b)(ii)(dd) & (c) inserted by reg. 4(a)-(b) of S.I. 2011/839 as from 31.3.11.

(11) The revaluation amount for ►<sup>1</sup>the period referred to in paragraph (10)(b), or, where sub-paragraph (c) applies, the periods referred to in paragraph (10)(b) and (c)◄ is–

- (a) where–
  - <sup>1</sup>(i) that period–
    - (aa) referred to in paragraph (10)(b) where sub-paragraph (c) does not apply; or
    - (bb) covered by both periods referred to in paragraph (10)(b) and (c) where sub-paragraph (c) applies, is less than one month; or◄
  - (ii) the qualifying member became entitled to an annual payment or began to receive present payment from the scheme prior to the calculation date, nil; and

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<sup>1</sup>In reg. 17, words in para. (12)(a) deleted, paras. (13) & (14)(a) & words in paras. (11) & (14)(b) substituted & (13A) & words in para. (12)(a) inserted by reg. 4(c)-(f) of S.I. 2011/839 as from 31.3.11.

(b) in any other case, the revaluation percentage of the notional pension.

(12) In paragraph (11), “the revaluation percentage” means the lesser of–

- (a) the percentage increase in the general level of prices  $\blacktriangleright^1\blacktriangleleft$  during the revaluation period  $\blacktriangleright^1$  or periods  $\blacktriangleleft$  determined in accordance with paragraph (10); and
- (b) the maximum revaluation rate.

$\blacktriangleright^1$ (13) Subject to paragraph (13A), the method for determining the percentage increase in the general level of prices during the revaluation periods determined in accordance with paragraph (10)(b) and (c) is–

$$(100 \times (A \div B)) - 100$$

where–

- (a) A is the general level of prices for the month which falls two months before the month in which the last day of the revaluation period falls; and
- (b) B is the general level of prices for the month which falls two months before the month in which the first day of the revaluation period falls.  $\blacktriangleleft$

(13A) Where the entire period determined in accordance with paragraph (10)(b) falls before 31st March 2011, the method for determining the percentage increase in the general level of prices during that period is–

$$(100 \times (A \div B)) - 100$$

where–

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.  $\blacktriangleleft$

(14) In paragraph (12)(b), “the maximum revaluation rate” is–

- $\blacktriangleright^1$ (a) if the period covered by the period or periods mentioned in paragraph (12)(a) is a period of 12 months, 5%; or  $\blacktriangleleft$
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (12)(a) had the general level of prices  $\blacktriangleright^1$ , whether determined in accordance with paragraph (13) or (13A),  $\blacktriangleleft$  increased at the rate of 5% compound per annum during that period.

(15) In paragraph (8), “relevant date” means–

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an annual payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary is a qualifying member to whom sub-paragraph (a) does not apply, but to whom paragraph (3) or (3C) applies, the date on which the qualifying member became entitled to an annual payment under that paragraph; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(16) Where a qualifying member entitled to an annual payment in accordance with this regulation is a qualifying member to whom regulation 17H applied, the annual payment shall be determined in accordance with–

- (a) Schedule 3, where–
  - (i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

- (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an annual payment under this regulation is higher than the amount of the annual payment to which the qualifying member would be entitled in accordance with Schedule 2 if that Schedule applied; and
  - (b) Schedule 4, where—
    - (i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
    - (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an annual payment under this regulation is higher than the amount of the annual payment to which the member would be entitled in accordance with Schedule 2 if that Schedule applied.
- (17) Where a beneficiary is entitled to an annual payment in accordance with this regulation because they are the survivor or surviving dependant of a qualifying member to whom, immediately before the qualifying member's death, regulation 17H applied, the annual payment shall be determined in accordance with—

- (a) Schedule 3, where—
  - (i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (ii) one half of the payment which was payable to the qualifying member under Schedule 7, disregarding any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, on the day on which the qualifying member died is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 5(6A) of that Schedule were omitted; and
- (b) Schedule 4, where—
  - (i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (ii) the relevant proportion of the payment which was payable to the qualifying member in accordance with Schedule 7, disregarding any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, on the day on which the qualifying member died is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied.

(18) In paragraph (8) and paragraph (17), “relevant proportion” means the proportion of the notional pension which relates to the beneficiary.◀

#### ►<sup>1</sup>Ill health payments

**17A.**—(1) Except where the qualifying member is entitled to an annual payment under regulation 17(2) ►<sup>2</sup>, (3) or (3C) or 17C◀ where the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age, that member shall be entitled to a payment (“an ill health payment”) ►<sup>3</sup>◀ from—

- (a) the day on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 come into force;

<sup>1</sup>Regs. 17A & 17B inserted by reg. 10 of S.I. 2008/1903 as from 17.7.08.

<sup>2</sup>Words substituted in reg. 17A(1) by reg. 5(2) of S.I. 2009/792 as from 27.3.09.

<sup>3</sup>Words deleted in reg. 17A(1) by reg. 9 of S.I. 1149/2010 as from 2.4.10.

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- (b) subject to paragraph (2), the day on which the scheme manager is first notified that that member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
- (c) the day on which the member attains the age which is 5 years less than normal retirement age,

whichever is the latest.

(2) Where the scheme manager—

- (a) has been notified that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age;
- (b) is not so satisfied or the qualifying member withdraws the notification; and
- (c) receives a further notification in relation to that qualifying member and is then so satisfied,

the day which is the day for the purposes of paragraph (1)(b) is the day of the later notification.

(3) Where—

- (a) a qualifying member of a qualifying pension scheme has died and leaves a survivor <sup>1</sup>or a surviving dependant<sup>2</sup>; and
- (b) that qualifying member was receiving an ill health payment or an interim ill health payment when he died,

the survivor <sup>1</sup>and any surviving dependants<sup>2</sup> of that qualifying member shall be entitled to an ill health payment from the day after the day on which that qualifying member died.

(4) An ill health payment shall be made in respect of a year starting on the day on which <sup>1</sup>an instalment<sup>2</sup> of the ill health payment or, as the case may be, an interim ill health payment, is first payable to a beneficiary by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(5) In determining the amount of an ill health payment that is payable to, or in respect of, a beneficiary <sup>2</sup>entitled to an ill health payment in accordance with Schedule 2A<sup>2</sup> for any previous year or years (“arrears payable”)—

- (a) the total of all <sup>1</sup>instalments<sup>2</sup> of an interim ill health payment that have been made to, or in respect of, the beneficiary for any previous year or years is to be deducted from the amount of arrears payable to that beneficiary; and
- (b) if the total of all such <sup>1</sup>instalments<sup>2</sup> is greater than that amount of arrears payable—
  - (i) the amount to be paid in respect of arrears payable is nil, and
  - (ii) the difference between that total and the amount of arrears payable is recoverable from the member in accordance with regulation 7 of the FAS Information and Payments Regulations (recovery of overpayments)(a).

(6) Subject to paragraph (7) <sup>3</sup>, regulation 17C(7) and paragraph 10 of Schedule 2A<sup>2</sup>, ill health payments which are payable to a <sup>1</sup>qualifying member or survivor<sup>2</sup> under this regulation shall continue for life.

<sup>1</sup>(6A) Ill health payments which are payable to a surviving dependant under this regulation shall continue, subject to paragraph (7), until the surviving dependant—

- (a) where neither sub-paragraph (b) nor (c) applies, attains the age of 18;
- (b) where the surviving dependant is attending a qualifying course,—
  - (i) attains the age of 23; or
  - (ii) leaves the qualifying course

whichever is the earlier; or

- (c) where the surviving dependant is incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995, attains the age of 23.

(a) Regulation 7 was amended by S.I. 2007/3581.

<sup>1</sup>In reg. 17A, words in paras. (3) & (3)(a) & paras. (6A) & (6B) inserted, words in paras. 5(a) & (b) deleted & words in paras. (4) & (6) substituted by regs. 13(a)-(c) & 17(2)(b) & (3)(b) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Words inserted in reg. 17A(5) by reg. 9(b) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Words inserted in reg. 17A(6) by reg. 5(3) of S.I. 2009/792 as from 27.3.09.

(6B) Where an ill health payment ceases to be payable to a surviving dependant as a result of paragraph (6A)(a) or (b)(ii) and the surviving dependant subsequently—

- (a) attends a qualifying course; or
- (b) becomes incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995,

before attaining the age of 23, that surviving dependant shall be entitled to an ill health payment <sup>1</sup> from the day on which the scheme manager is satisfied that the surviving dependant satisfies sub-paragraph (a) or (b) until a day determined in accordance with paragraph (6A).<sup>2</sup>

<sup>1</sup>Words deleted in reg. 17A(6B) & para. (8) substituted for paras. (8)-(16) by reg. 9(c) & (d) of S.I. 2010/1149 as from 2.4.10.

<sup>2</sup>Reg. 17A(7) inserted by reg. 13(d), 7(2)(a) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>(7) Where a beneficiary dies or otherwise ceases to be entitled to an ill health payment—

- (a) subject to sub-paragraph (b), any further instalments of an ill health payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
- (b) any instalment of an ill health payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an ill health payment shall be payable.◀

<sup>1</sup>(8) Subject to paragraph (16), and until such time, if any, as regulation 17F applies, where a beneficiary is entitled to an ill health payment in accordance with this regulation, that ill health payment shall be determined in accordance with—

- (a) Schedule 2A, where none of sub-paragraphs (b) to (i) nor paragraph (16) applies;
- (b) Schedule 5, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the product of C multiplied by the revalued notional pension in relation to the qualifying member; and
    - (bb) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the ill health payment to which that qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of Schedule 2 were omitted;

- (c) Schedule 5, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant; and
  - (iii) the qualifying member in respect of the beneficiary was entitled to an ill health payment in accordance with Schedule 5 immediately before the death of the member;
- (d) Schedule 5, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary—

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- (aa) was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
- (bb) was entitled to an ill health payment immediately before the death of the qualifying member; and
- (cc) died on or after the calculation date and before the day on which the transfer notice was given; and
- (iv) the sum of—
  - (aa) the product of C multiplied by one half of the revalued notional pension in relation to the qualifying member;
  - (bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and
  - (cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the ill health payment to which a survivor would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(2A) of that Schedule and paragraph 2(3A) to (3G) of Schedule 2 were omitted;

- (e) Schedule 5, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) neither the beneficiary nor the qualifying member in respect of the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
  - (iv) the beneficiary was entitled to an ill health payment immediately before the calculation date; and
  - (v) the sum of—
    - (aa) the survivor notional pension determined in respect of the beneficiary; and
    - (bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of Schedule 2 were omitted;

- (f) Schedule 6, where—
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (iii) the sum of—
    - (aa) the notional pension in relation to that qualifying member; and

(bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted;

(g) Schedule 6, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) either—

(aa) the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules as a result of the death of a qualifying member; or

(bb) the qualifying member in respect of the beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules,

before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

(iv) the beneficiary was entitled to an ill health payment immediately before the calculation date; and

(v) the sum of—

(aa) the survivor notional pension determined in respect of the beneficiary; and

(bb) the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted;

(h) Schedule 6, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) the qualifying member in respect of the beneficiary—

(aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

(bb) died on or after the calculation date, but before the day on which the transfer notice was given; and

(cc) was entitled to an ill health payment when the qualifying member died; and

(iv) the sum of—

(aa) the proportion of the notional pension which relates to the beneficiary;

(bb) the relevant proportion of the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the date on which the qualifying member died; and

(cc) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice is given,

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is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted; and

- (i) Schedule 6, where–
  - (i) a transfer notice has been given in respect of the qualifying pension scheme;
  - (ii) the beneficiary is a survivor or surviving dependant;
  - (iii) the qualifying member in respect of the beneficiary–
    - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
    - (bb) died on or after the day on which the transfer notice was given; and
    - (cc) was entitled to an ill health payment when the qualifying member died; and
  - (iv) the sum of–
    - (aa) the proportion of the notional pension which relates to the beneficiary;
    - (bb) the relevant proportion of the total amount of annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice was given; and
    - (cc) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died,

is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3A) to (3E) of Schedule 2 were omitted.

- (9) For the purposes of paragraphs (8) and (16)–
  - (a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations–
    - (i) the qualifying member was entitled to a payment under the scheme rules;
    - (ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and
    - (iii) the qualifying member's entitlement became payable, as a result of paragraphs (i) and (ii) being satisfied; and
  - (b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.
- (10) In paragraph (8)(b)(iii) and (d)(iv)–
 

“the revalued notional pension” means the aggregate of–

  - (a) the notional pension; and
  - (b) the revaluation amount for the period–
    - (i) beginning on the calculation date; and
    - (ii) ending on the earlier of–
      - (aa) the day on which the qualifying member became entitled to an ill health payment; and
      - (bb) the day on which the qualifying member began to receive a present payment from the scheme; and

►<sup>1</sup>(cc) 30th March 2011, provided that the calculation date falls before 30th March 2011; and

- (c) in any case where the calculation date falls on or before 30th March 2011 and the day on which the beneficiary became entitled to an ill health payment or began to receive a present payment from the scheme falls after 30th March 2011, the revaluation amount for the period beginning on 31st March 2011 and ending on the day on which the beneficiary became entitled to an ill health payment or began to receive present payment from the scheme; and

<sup>1</sup>In reg. 17A, paras. (10)(b)(ii)(cc), (10)(c) & (13A) & words in paras. (11) & (12)(a) inserted, words in para. (12)(a) deleted & paras. (11)(a)(i) & (13) substituted by reg. 5(a)-(e) of S.I. 2011/839 as from 31.3.11.

“C” means—

- (a) 1, where the qualifying member was—
  - (i) entitled to an ill health payment on the calculation date; or
  - (ii) receiving a present payment from the scheme on the calculation date; and
- (b) the actuarial factor to be applied in respect of the beneficiary in accordance with Schedule 5, where the qualifying member was not receiving a present payment from the scheme on the calculation date and became entitled to an ill health payment after the calculation date.

(11) The revaluation amount for the period ►<sup>1</sup>, or, where paragraph (10)(c) applies, the periods, ◀ referred to in the definition of “the revalued notional pension” in paragraph (10) is—

- (a) where—
  - <sup>1</sup>(i) the period—
    - (aa) referred to in paragraph (10)(b) where sub-paragraph (c) does not apply; or
    - (bb) covered by both periods referred to in paragraph (10)(b) and (c) where sub-paragraph (c) applies,
 is less than one month; or
  - (ii) the qualifying member became entitled to an ill health payment or began to receive a present payment from the scheme prior to the calculation date,
- (b) in any other case, the revaluation percentage of the notional pension.

(12) In paragraph (11), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices ►<sup>1</sup>◀ during the revaluation period ►<sup>1</sup> or periods ◀ determined in accordance with paragraph (10); and
- (b) the maximum revaluation rate.

►<sup>1</sup>(13) Subject to paragraph (13A), the method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraphs (b) and (c) of the definition of “the revalued notional pension” in paragraph (10) is—

$$(100 \times (A \div B)) - 100$$

where—

- (a) A is the general level of prices for the month which falls two months before the month in which the last day of the revaluation period falls; and
- (b) B is the general level of prices for the month which falls two months before the month in which the first day of the revaluation period falls. ◀

►<sup>1</sup>(13A) Where the entire period determined in accordance with sub-paragraph (b) of the definition of “the revalued notional pension” in paragraph (10) falls before 31st March 2011, the method for determining the percentage increase in the general level of prices during that period is—

$$(100 \times (A \div B)) - 100$$

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where—

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.◀

(14) In paragraph (12)(b), “the maximum revaluation rate” is—

- ▶<sup>1</sup>(a) if the period covered by the period or periods mentioned in paragraph (12)(a) is a period of 12 months, 5%; or◀
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (12)(a) had the general level of prices ▶<sup>1</sup>, whether determined in accordance with paragraph (13) or (13A),◀ increased at the rate of 5% compound per annum during that period.

(15) In paragraph (8), “relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an ill health payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary became entitled to an ill health payment after the calculation date and prior to receiving a payment from the scheme, the date on which the beneficiary became so entitled; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(16) Where a qualifying member entitled to an ill health payment in accordance with this regulation is a qualifying member to whom regulation 17H applied, the ill health payment shall be determined in accordance with—

- (a) Schedule 5, where—
  - (i) the qualifying member was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an ill health payment under this regulation is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied; and
- (b) Schedule 6, where—
  - (i) the qualifying member was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
  - (ii) the payment which was payable to the qualifying member under Schedule 7, taking into account any reduction made to that payment under paragraph 1(2) or (5) of that Schedule, immediately before the qualifying member became entitled to an ill health payment under this regulation is higher than the amount of the ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied.◀

<sup>1</sup>In reg. 17A, para. (14)(a) & words in para. (14)(b) substituted by reg. 5(f) of S.I. 2011/839 as from 31.3.11.

**Interim ill health payments**

**17B.**—(1) This regulation applies where ►<sup>1</sup>◄

- (a) the scheme manager has been notified that, and is satisfied that, a qualifying member of ►<sup>1</sup>a qualifying pension scheme◄ is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
- (b) a qualifying member of that scheme—
  - (i) has died and leaves a survivor ►<sup>1</sup>or a surviving dependant◄; and
  - (ii) was receiving an interim ill health payment when he died.

<sup>1</sup>Words in reg. 17B(1), (1)(a) & (b) & (2)(a) substituted, inserted & deleted by regs. 7(2)(a), 14(a) & (b) of S.I. 2009/1851 as from 10.7.09.

(2) ►<sup>2</sup>Except where regulation 17C(8)(b)(i) applies, the scheme manager◄ may, in ►<sup>1</sup>its◄ discretion, make an interim ill health payment, in anticipation of an ill health payment being payable under this Part and on account of such a payment—

<sup>2</sup>Words substituted in reg. 17B(2) by reg. 6(2) of S.I. 2009/792 as from 27.3.09.

- (a) to the qualifying member with effect from—
  - (i) the day on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 come into force;
  - (ii) subject to paragraph (3), the day on which the scheme manager is first notified that that member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
  - (iii) the day on which the member attains the age which is 5 years less than normal retirement age, whichever is the latest; or
- (b) if the qualifying member has died, to a survivor ►<sup>1</sup>and any surviving dependants◄ of that qualifying member with effect from the day after the day on which that qualifying member died.

(3) Where the scheme manager—

- (a) has been notified that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age;
- (b) is not so satisfied or the qualifying member withdraws the notification; and
- (c) receives a further notification in relation to that qualifying member and is then so satisfied,

the day which is the day for the purposes of paragraph (2)(a)(ii) is the day of the later notification.

(4) In exercising ►<sup>3</sup>its◄ discretion under paragraph (2), the scheme manager shall only have regard to—

<sup>3</sup>Words in paras. (4) & (5) substituted, words in para. (5) added by reg. 7(2)(a) & 14(c) of S.I. 2009/1851 as from 10.7.09.

- (a) the amount, if any, of any interim pension that was in payment, is in payment, or is proposed to be paid, from the qualifying pension scheme to the qualifying member; and
- (b) any circumstances relating to the scheme which, in the opinion of the scheme manager are relevant to determining whether an interim ill health payment should be made.

(5) Where the trustees or managers have determined the amount of interim pension that would be paid to the qualifying member ►<sup>3</sup>, any surviving dependants◄ or the survivor of that qualifying member, but do not propose to pay that interim pension for administrative reasons, the scheme manager may, in exercising ►<sup>3</sup>its◄ discretion under paragraph (2) and in determining the amount of interim ill health payment under Schedule 2A, deem that member ►<sup>3</sup>, any such surviving dependant◄ or that survivor to be receiving that interim pension, if in the scheme manager’s opinion it is reasonable to do so.

(6) Schedule 2A makes provision for the determination of the amount of interim ill health payments and the circumstances in which an interim ill health payment is not payable.

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(7) If the scheme manager determines that an interim ill health payment may be made under paragraph (2), the interim ill health payment is payable—

- (a) to a qualifying member from the relevant day mentioned in that paragraph until the day on which the qualifying member—
  - (i) would have been paid, or is paid, the first <sup>1</sup> instalment of an ill health payment in accordance with regulation 19, if an ill health payment were payable, or is payable, to him under this Part; or
  - (ii) dies,
 whichever is the earlier; <sup>1</sup>
- (b) in respect of a qualifying member who has died, to a survivor of that qualifying member from the day after the day on which that qualifying member died until the day on which his survivor—
  - (i) would have been paid, or is paid, the first <sup>1</sup> instalment of an ill health payment in accordance with regulation 19, if an ill health payment were payable, or is payable, to him under this Part; or
  - (ii) dies,
 whichever is the earlier, <sup>1</sup> and
- (c) in respect of a qualifying member who has died, to a surviving dependant of that qualifying member from the day after the day on which that qualifying member died until the day on which the surviving dependant—
  - (i) would have been paid, the first instalment of an ill health payment in accordance with regulation 19, if an ill health payment were payable, or is payable, to that surviving dependant under this Part; or
  - (ii) dies or otherwise ceases to be entitled to an ill health payment in accordance with regulation 17A,
 whichever is the earlier. <sup>1</sup>

<sup>1</sup>Para. (8) substituted, para. 7(c) added & words deleted in paras. (7)(a) & (b) by reg. 7(2)(a) & 14(d) of S.I. 2009/1851 as from 10.7.09.

<sup>1</sup>(8) Where a beneficiary dies or otherwise ceases to be entitled to an ill health payment—

- (a) subject to sub-paragraph (b), any further instalments of an interim ill health payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
- (b) any instalment of an interim ill health payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an ill health payment shall be payable. <sup>1</sup>

(9) The scheme manager may, at any time before the amount of the ill health payment is determined, redetermine the amount of any interim ill health payment paid under paragraph (2) if <sup>2</sup> it <sup>1</sup> is satisfied that the amount being paid by way of an interim ill health payment, as determined in accordance with Schedule 2A, may be incorrect.

<sup>2</sup>In reg. 17B, words substituted in para. (9) & words deleted & added to para. 11 by regs. 7(a), 14(f) & 17(c) of S.I. 2009/1851 as from 10.7.09.

(10) The power to redetermine the amount of an interim ill health payment under paragraph (9) includes the power to redetermine the amount as a result of a change in the amount of interim pension being paid to the qualifying member.

(11) If, having determined that an interim ill health payment may be made under paragraph (2), the scheme manager subsequently determines, in accordance with Schedule 2A, that no ill health payment is payable to or in respect of that qualifying member <sup>2</sup>, that qualifying member's surviving dependants <sup>1</sup> or his survivor, then the total of all <sup>2</sup> instalments of an interim ill health pension made to or in respect of that qualifying member <sup>2</sup>, any surviving dependant <sup>1</sup> or his survivor is recoverable in accordance with regulation 7 of the FAS Information and Payments Regulations. <sup>1</sup>

<sup>3</sup>Reg. 17C inserted by reg. 7 of S.I. 2009/792 as from 27.3.09.

### <sup>3</sup>Annual payments for certain applications in cases of severe ill health

**17C.—**(1) A qualifying member shall be entitled to an annual payment determined in accordance with Schedule 2 where the conditions in paragraphs (2) and (3) are met.

(2) The condition in this paragraph is that, subject to paragraph (9), the qualifying member makes a written request for an annual payment under this regulation during

the period of 12 months beginning with the date on which the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 come into force.

(3) The conditions in this paragraph are that the scheme manager is satisfied that the qualifying member-

- (a) has attained the age of 55;
- (b) suffers from a progressive disease and as a consequence can reasonably be expected to die within five years;
- (c) is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; and
- (d) is not regarded as a qualifying member by virtue of regulation 15(5).

(4) The date from which a qualifying member is entitled to an annual payment under this regulation is-

- (a) where the scheme manager is satisfied that the conditions in paragraph (3) were met before the date on which the scheme manager receives the written request mentioned in paragraph (2), whichever is the later of-
  - (i) the date on which the scheme manager is satisfied that the conditions in paragraph (3) would first have been met; or
  - (ii) 14th May 2004; or
- (b) in all other cases, the date on which the scheme manager receives the written request mentioned in paragraph (2).

(5) In determining whether or not the scheme manager is satisfied in accordance with paragraph (4)(a), the scheme manager shall have regard to-

- (a) the information available as to the length of time the qualifying member has met the conditions in paragraph (3);
- (b) the medical evidence available, taking into account-
  - (i) such evidence as the scheme manager would have expected the qualifying member to have been able to provide in accordance with Schedule 2 to the FAS Information and Payments Regulations, and
  - (ii) the effect of the lapse of time on the availability of that evidence; and
- (c) such other matters as the scheme manager considers relevant.

(6) Paragraphs (4) to (7) of regulation 17 apply to annual payments made under this regulation.

(7) Paragraph (8) applies where-

- (a) on the date the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 come into force, the qualifying member is receiving a payment in accordance with these Regulations (other than payments for a survivor by virtue of regulation 17(4), 17A(3), 17B(2)(b) or 18(4)); and
- (b) the qualifying member is entitled to an annual payment in accordance with this regulation.

(8) Where this paragraph applies, from the date on which the scheme manager determines that the qualifying member is entitled to an annual payment in accordance with this regulation-

- (a) the qualifying member is not entitled to-
  - (i) an annual payment under regulation 17(2);
  - (ii) an annual payment for terminal illness under regulation 17(3); or
  - (iii) an ill health payment under regulation 17A(1); and
- (b) the scheme manager may not make-
  - (i) an initial payment under regulation 18 in anticipation of an annual payment being payable under regulation 17(2);

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<sup>1</sup>Words substituted in reg. 17C(8)(b)(iii) by reg. 15 of S.I. 2009/1851 as from 10.7.09.

- (ii) an interim ill health payment under regulation 17B(2); or
- (iii) an initial payment for terminal illness by virtue of <sup>1</sup>regulation 18(4)◀.

## (9) Where—

- (a) a qualifying member has died;
- (b) the scheme manager is satisfied that prior to death that qualifying member satisfied the conditions in paragraph (3); and
- (c) the relevant representative makes a written request in respect of that qualifying member during the time period set out in paragraph (2);

that qualifying member shall be entitled to an annual payment in accordance with this regulation.

(10) Any annual payment (or initial payment under regulation 18) payable under paragraph (9) is payable to the estate of the deceased qualifying member.

(11) For the purposes of paragraph (9), references in these Regulations to “qualifying member” may be construed as references to the deceased qualifying member or to the deceased qualifying member’s estate, as the case requires.

## (12) For the purposes of this regulation—

“relevant representative” means—

- (a) the survivor of the deceased qualifying member referred to in paragraph (9), or
- (b) where there is no survivor in relation to that qualifying member, that member’s personal representative; and

“personal representative” has the meaning given in regulation 2(1) of the FAS Information and Payments Regulations.◀

<sup>2</sup>Regs. 17D to 17H inserted by reg. 10(1) of S.I. 2010/1149 as from 2.4.10.

▶<sup>2</sup>Lump sum payments

**17D.**—(1) This regulation applies where the qualifying member—

- (a) is a qualifying member to whom Part 7 applies;
- (b) is a qualifying member of a qualifying pension scheme in respect of which a transfer notice has been given;
- (c) is not regarded as a qualifying member by virtue of regulation 15(5);
- (d) was not receiving a present payment under scheme rules before the day on which the transfer notice was given;
- (e) has made a written request to commute for a lump sum a portion of the annual payment or ill health payment to which that qualifying member is entitled no later than—
  - (i) the day before the day on which the qualifying member becomes entitled to an annual payment or ill health payment; or
  - (ii) such later day by which the scheme manager may determine that it will accept a written request in the case of any particular member; and
- (f) the notional pension determined for the qualifying member is more than nil.

(2) Where this regulation applies a qualifying member shall be entitled to commute for a lump sum a portion of the payments payable or which may become payable to and in respect of that qualifying member under these Regulations—

- (a) subject to sub-paragraph (b), immediately before the day on which that member becomes entitled to an annual payment or ill health payment in accordance with these Regulations; or
- (b) where paragraph (1)(e)(ii) applies, at any point prior to the date determined by the scheme manager under that paragraph.

(3) The portion commuted for a lump sum under paragraph (2) shall not exceed the revalued notional pension as construed in accordance with regulation 17(10) or, where the qualifying member is entitled to an ill health payment, regulation 17A(10).

(4) The lump sum payable under paragraph (2) is the actuarial equivalent of the commuted portion of payments to be made in respect of the qualifying member in accordance with these Regulations and shall not exceed 25% of the sum of—

- (a) the product of 20 multiplied by the amount of the annual payment or ill health payment after commutation; and
- (b) the lump sum derived from the portion commuted.

(5) The scheme manager shall only be bound to make a determination in relation to the amount of an annual payment or an ill health payment payable after the time within which the qualifying member may make a written request for a lump sum in accordance with paragraph (1)(e) has expired.

**Redetermination of an annual payment previously determined in accordance with Schedule 4**

**17E.**—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an annual payment determined in accordance with Schedule 4, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

(2) The amounts in this paragraph are—

- (a) the amount of the annual payment determined in accordance with Schedule 4; and
- (b) the amount of any annual increases to which the beneficiary was entitled on the indexation date in accordance with paragraph 7 of Schedule 4.

(3) The amounts in this paragraph are—

- (a) the amount of an annual payment which would be determined in accordance with Schedule 2 in respect of the beneficiary; and
- (b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2,



if the beneficiary were entitled to an annual payment determined in accordance with Schedule 2.

- (4) Where this regulation applies—
- (a) the scheme manager shall redetermine the amount of the annual payment; and
  - (b) the beneficiary shall, from the indexation date—
    - (i) be entitled to an annual payment determined in accordance with Schedule 2; and
    - (ii) cease to be entitled to an annual payment determined in accordance with Schedule 4.

**Redetermination of an ill health payment previously determined in accordance with Schedule 6**

**17F.**—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an ill health payment determined in accordance with Schedule 6, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

- (2) The amounts in this paragraph are—
- (a) the amount of the ill health payment determined in accordance with Schedule 6; and
  - (b) the amount of any annual increases to which the beneficiary was entitled on the indexation date in accordance with paragraph 7 of Schedule 6.
- (3) The amounts in this paragraph are—
- (a) the amount of an ill health payment which would be determined in accordance with Schedule 2A in respect of the beneficiary; and
  - (b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2A,

if the beneficiary were entitled to an ill health payment determined in accordance with Schedule 2A.

- (4) Where this regulation applies—
- (a) the scheme manager shall redetermine the amount of the ill health payment; and
  - (b) the beneficiary shall, from the indexation date—
    - (i) be entitled to an ill health payment determined in accordance with Schedule 2A; and
    - (ii) cease to be entitled to an ill health payment determined in accordance with Schedule 6.

**Payments to beneficiaries other than qualifying members, survivors and surviving dependants**

- 17G.**—(1) This regulation applies where—
- (a) a notional pension has been determined in accordance with regulation 27 in respect of a person who—
    - (i) is not a qualifying member, a survivor or surviving dependant; but
    - (ii) is a person in respect of whom the qualifying pension scheme—
      - (aa) as a result of the death of a qualifying member, had a liability to provide a pension or other benefit at the calculation date; and
      - (bb) would have continued to have a liability to provide that pension or other benefit had the trustees or managers not been discharged from that liability under section 161 (as modified by Schedule 1 to these Regulations); and

(b) a transfer notice has been given in respect of the qualifying pension scheme.

(2) Where this regulation applies, that person shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 7.

(3) A person entitled to a payment under paragraph (2) shall be entitled to that payment—

- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is given; and
- (b) until the day on which entitlement to a payment from the scheme would have ended in accordance with scheme rules.

(4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the person by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(5) Where a person ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—

- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to that person, in respect of that year, cease to be payable; and
- (b) any instalment of such a payment which is payable in respect of a period which includes the day on which the person has died or otherwise ceased to be entitled to a payment shall be payable.

**Payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment**

**17H.**—(1) This regulation applies where—

- (a) a transfer notice has been given in respect of a qualifying pension scheme;
- (b) a qualifying member is not entitled to an annual payment or an ill health payment; and
- (c) that qualifying member was receiving present payment of a pension under the scheme rules on the day on which the transfer notice is given.

(2) Where this regulation applies, the qualifying member shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 7.

(3) A qualifying member entitled to a payment under paragraph (2) shall be entitled to that payment—

- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is given; and
- (b) until the earlier of—
  - (i) the day before the day on which the qualifying member becomes entitled to an annual payment or an ill health payment; and
  - (ii) the day on which the qualifying member dies.

(4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the qualifying member by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(5) Where the qualifying member ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—

- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to the qualifying member, in respect of that year, cease to be payable; and
- (b) where the member dies before becoming entitled to an annual payment or ill health payment, any instalment of such a payment which is payable in respect

of a period which includes the day on which the qualifying member died shall be payable.◀

▶<sup>1</sup>Initial payments

18.—(1) ▶<sup>2</sup>◀

(2)–(3) ▶<sup>3</sup>◀

(a) to the qualifying member in respect of whom the request was made, with effect from whichever is the later of–

- (i) 14th May 2004; or
- (ii) the date of which–
  - (aa) the qualifying member attains the age of 65, or
  - (bb) the scheme manager is first notified that the qualifying member is terminally ill, whichever is the earlier; or

▶<sup>4</sup>(4) ▶<sup>5</sup>Except where ▶<sup>6</sup>paragraph (4B) or◀ regulation 17C(8)(b)(i) or (iii) applies, the scheme manager◀ may, in ▶<sup>6</sup>its discretion◀, make a payment (“an initial payment”) to, or in respect of, a qualifying member ▶<sup>6</sup>, the qualifying member’s surviving dependants◀ or his survivor–

- (a) in anticipation of an annual payment being payable under this Part to the qualifying member ▶<sup>6</sup>, the qualifying member’s surviving dependants◀ or his survivor, and on account of such a payment; and
- (b) before any ▶<sup>6</sup>◀ instalment of that annual payment is made.

(4A) An initial payment under paragraph (4) may be made–

- (a) except where sub-paragraph (c) applies, to the qualifying member with effect from whichever is the later of–
  - (i) 14th May 2004; or
  - (ii) the ▶<sup>5</sup>earliest◀ of–
    - (aa) the day on which the qualifying member attains normal retirement age; or
    - (bb) the day on which the scheme manager is first notified that the qualifying member is terminally ill▶<sup>5</sup>; or
    - (cc) the day on which the qualifying member becomes entitled to a payment under regulation 17(3C) or 17C;◀
- (b) if the qualifying member has died, to a survivor ▶<sup>6</sup>and any surviving dependants of that qualifying member with effect from whichever is the later of–
  - (i) 14th May 2004; or
  - (ii) the day after the day on which that qualifying member died; or
- (c) if the qualifying member is regarded as a qualifying member under regulation 15(5), to that member with effect from whichever is the later of–
  - (i) 14th May 2004; or
  - (ii) the date on which he became entitled to a present payment from the qualifying pension scheme.◀

▶<sup>6</sup>(4B) Where a qualifying member who has died was a party to a polygamous marriage the scheme manager may, in its discretion, make a payment (“a shared initial payment”) to each survivor–

- (a) in anticipation of an annual payment being payable under this Part to those survivors;
- (b) before any instalment of that annual payment is made; and
- (c) with effect from whichever is the later of–
  - (i) 14th May 2004; and
  - (ii) the day after the day on which that qualifying member died.

<sup>1</sup>Reg. 18 substituted by reg. 4(1)(4) of S.I. 2005/3256 as from 24.11.05.

<sup>2</sup>Reg. 18(1) omitted by reg. 16(a) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Reg. 18(2) & (3) omitted by reg. 11(a) of S.I. 2008/1903 as from 17.7.08.

<sup>4</sup>Regs. 18(4) substituted for (4) & (4A) by reg. 11(b) of S.I. 2008/1903 as from 17.7.08.

<sup>5</sup>Words substituted in paras. (4) & (4A)(a)(ii) & para. (4A)(a)(ii)(cc) added by regs. 8(3) & (4) of S.I. 2009/792 as from 27.3.09.

<sup>6</sup>In reg. 18, words deleted, substituted & added in paras. (4), (4)(a) & (b), (4A) & (4A)(b) & paras. (4B)-(4D) inserted by regs. 7(3) & 16(b)-(d) of S.I. 2009/1851 as from 10.7.09.

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(4C) In exercising its discretion under paragraph (4B), the scheme manager may only have regard to—

- (a) the amount, if any, of any interim pension that was in payment, is in payment, or is proposed to be paid, from the qualifying pension scheme to any of the survivors of the qualifying member; and
- (b) any circumstances relating to the scheme which, in the opinion of the scheme manager, are relevant to determining whether a shared initial payment should be made.

(4D) Paragraphs (5A) and (7) to (9A) shall apply to a shared initial payment under paragraph (4B) with the following modifications—

- (a) for “paragraph (4)” in each place it occurs, substitute “paragraph (4B)”;
- (b) for “initial payment” in each place it occurs, substitute “shared initial payment”.<sup>1</sup>

(5) In exercising his discretion under paragraph (4), the scheme manager may only have regard to—

- (a) the amount, if any, of any interim pension that was in payment, is in payment, or is proposed to be paid, from the qualifying pension scheme—
  - (i) to a qualifying member up until his death; or
  - (ii) after his death, to his survivor<sup>1</sup> or surviving dependants<sup>2</sup>; and
- (b) any circumstances relating to the scheme which, in the opinion of the scheme manager, are relevant to determining whether an initial payment should be made.

<sup>1</sup>In reg. 18 words inserted & substituted in paras. (5)(a), (5A) & (6), words deleted in para. (7)(a) & (b)(i), para. (7)(c) added by regs. 7(2)(a) & (3) & 16(e)-(h) of S.I. 2009/1851 as from 10.7.09.  
<sup>2</sup>Reg. 18(5A) inserted by reg. 6(2)(d) of S.I. 2006/3370 as from 16.12.06.

<sup>2</sup>(5A) Where the trustees or managers have determined the amount of interim pension that would be paid to the qualifying member<sup>1</sup>, any surviving dependants<sup>2</sup> or the survivor of that qualifying member, but do not propose to pay that interim pension for administrative reasons, the scheme manager may, in exercising<sup>1</sup> its<sup>2</sup> discretion under paragraph (4) and in determining the amount of initial payment under Schedule 2, deem that member<sup>1</sup>, that surviving dependant<sup>2</sup> or that survivor to be receiving that interim pension, if in the scheme manager’s opinion it is reasonable to do so.<sup>2</sup>

(6) Schedule 2 makes provision for the determination of the amount of initial payments<sup>1</sup> and shared initial payments<sup>2</sup>.

(7) If the scheme manager determines that an initial payment may be made under paragraph (4), the initial payment is payable—

- (a) to a qualifying member from the relevant day mentioned in that paragraph until the day on which that qualifying member—
  - (i) would have been paid, or is paid, the first<sup>1</sup> instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to him under this Part; or
  - (ii) dies,

whichever is the earlier;<sup>1</sup>
- (b) in respect of a qualifying member who has died, to a survivor of that qualifying member from the day after the day on which that qualifying member died until the day on which his survivor—
  - (i) would have been paid, or is paid, the first<sup>1</sup> instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to him under this Part; or
  - (ii) dies,

whichever is the earlier<sup>1</sup>; and
- (c) in respect of a qualifying member who has died, to a surviving dependant of that qualifying member from the day after the day on which that qualifying member died until the surviving dependant—

- (i) would have been paid, or is paid, the first instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to that surviving dependant under this Part; or
  - (ii) dies or otherwise ceases to be entitled to an annual payment in accordance with regulation 17,
- whichever is the earlier.◀

▶<sup>1</sup>(8) Where a beneficiary dies or otherwise ceases to be entitled to an annual payment—

- (a) subject to sub-paragraph (b), any further instalments of an initial payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
- (b) any instalment of an initial payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an annual payment shall be payable.◀

(9) The scheme manager may, at any time before the amount of the annual payment is determined, redetermine the amount of any initial payment paid under paragraph (4) if ▶<sup>2</sup>it◀ is satisfied that the amount being paid by way of initial payment, as determined in accordance with Schedule 2, may be incorrect.

▶<sup>3</sup>(9ZA) The power to redetermine the amount of an initial payment under paragraph (9) includes the power to redetermine that amount as a result of a change in the amount of interim pension being paid to the beneficiary.◀

▶<sup>4</sup>(9A) If, having determined that an initial payment may be made under paragraph (4), the scheme manager subsequently determines, in accordance with Schedule 2, that no annual payment is payable to or in respect of that qualifying member ▶<sup>2</sup>or that qualifying member’s survivor or surviving dependant◀ survivor, then the total of all ▶<sup>2</sup>◀ instalments of an initial payment made to or in respect of that qualifying member ▶<sup>2</sup>or that qualifying member’s survivor or surviving dependant◀ is recoverable in accordance with regulation 7 of the FAS Information and Payments Regulations.◀

(10) ▶<sup>5</sup>◀

▶<sup>6</sup>**Death benefit guarantees**

**18A.—**(1) This regulation applies where—

- (a) a qualifying member was entitled to an annual payment determined in accordance with Schedule 4 or 6;
- (b) under scheme rules, an amount was payable as a result of the qualifying member dying within a period specified in the scheme rules; and
- (c) the qualifying member dies within the period specified.

(2) Where this regulation applies, the scheme manager shall pay the amount payable—

- (a) to such person or persons specified in the scheme rules;
- (b) where no person is specified in the scheme rules, but the qualifying member has made a valid nomination in accordance with those rules, to such person or such persons nominated by the qualifying member; or
- (c) where neither sub-paragraph (a) nor (b) applies—
  - (i) to any survivor; or
  - (ii) if there is no survivor, to any surviving dependant; or
  - (iii) if there is no survivor or surviving dependant, to the estate of the qualifying member.

(3) In any case where the scheme manager is required under paragraph (2) to make a payment in respect of the qualifying member to more than one person, the amount payable shall be divided between the beneficiaries—

- (a) where paragraph (2)(a) or (b) applies and the scheme rules make provision for how the amount is to be divided, in accordance with scheme rules; and

<sup>1</sup>In reg. 18 para. (8) substituted by reg. 16(i) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Words substituted & deleted in regs. 18(9) & (9A) by regs. 7(1)(a), 16(j), 17(2)(d) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Reg. 18(9ZA) inserted by reg. 6(2)(c) of S.I. 2007/3581 as from 19.12.07.

<sup>4</sup>Reg. 18(9A) inserted by reg. 6(e) of S.I. 2006/3370 as from 16.12.06.

<sup>5</sup>Reg. 18(10) omitted by regs. 11 of S.I. 2008/1903 as from 17.7.08.

<sup>6</sup>Reg. 18A inserted by reg. 11 of S.I. 2010/1149 as from 2.4.10.

(b) in all other cases, equally.

(4) Where a payment to be made under this regulation would, but for this paragraph, include a fraction of a penny, that fraction shall be disregarded if it is less than half a penny and shall otherwise be treated as a penny.

(5) Payments made under this regulation shall be made by means of direct credit transfer or by such other means as appear to the scheme manager to be appropriate in the circumstances of any particular case.◀

## PART 6

### ADMINISTRATION OF PAYMENTS

#### Time and manner of payment: general provisions

<sup>1</sup>Words substituted & deleted in regs. 19(1), (2) & (4) & 20(1) by regs. 7(1)(a), 16(j), 17(2)(e)-(f) & 3(c) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Words inserted in regs. 19 and 20 by regs. 12(a)-(b) and 13 of S.I. 2010/1149 as from 2.4.10.

**19.**—(1) The scheme manager shall pay the annual payment ▶<sup>1</sup>, the ill health payment, an interim ill health payment◀▶<sup>2</sup>, a payment under regulation 17G or 17H◀ or an initial payment to the beneficiary or to his appointed representative, ▶<sup>1</sup>in instalments of no more than 52 in a year on a day specified by the scheme manager for the making of such payments to that beneficiary.◀

(2) For the purposes of paragraph (1), where the amount of ▶<sup>1</sup>an instalment◀ would, but for this paragraph, include a fraction of a penny, that fraction shall be disregarded if it is less than half a penny and shall otherwise be treated as a penny.

(3) The scheme manager shall start to pay the ▶<sup>1</sup>◀ instalments payable to a beneficiary on the first day specified in paragraph (1) which is as soon as reasonably practicable after the day on which—

(a) the beneficiary becomes entitled to an annual payment under regulation 17(2) to (4);

(b) the scheme manager determines that an initial payment may be made under regulation ▶<sup>3</sup>18(4)◀;

<sup>3</sup>Words substituted in reg. 19(3)(b) by reg. 4(5) of S.I. 2005/3256 as from 24.11.05.

▶<sup>4</sup>(c) the beneficiary becomes entitled to an ill health payment under regulation 17A(1) or (3); or

<sup>4</sup>Reg. 19(3)(c) & (d) inserted by reg. 12(a) of S.I. 2008/1903 as from 17.7.08.

(d) the scheme manager determines that an interim ill health payment may be made under regulation 17B(2);◀

▶<sup>2</sup>(e) the beneficiary becomes entitled to a payment under regulations 17G or 17H◀.

(4) ▶<sup>1</sup>◀ instalments shall be paid by means of direct credit transfer or by such other means as appear to the scheme manager to be appropriate in the circumstances of any particular case.

#### Direct credit transfer

**20.**—(1) Subject to paragraphs (3) and (4), ▶<sup>1</sup>◀▶<sup>2</sup>payments under regulation 18A and◀ instalments under regulation 19 may, by an arrangement between the scheme manager and the beneficiary or his appointed representative, be paid by way of direct credit transfer into a bank or other account—

(a) in the name of the beneficiary, his appointed representative or any other person with the consent of the beneficiary; or

(b) in the joint names of the beneficiary and any other person or the appointed representative and any other person.

<sup>5</sup>Words deleted in reg. 20(2) & substituted in reg. 20(3) by regs. 7(4)(a) & 17(2)(f) of S.I. 2009/1851 as from 10.7.09.

(2) ▶<sup>5</sup>◀ instalments shall be paid in accordance with paragraph (1) within seven days of the day on which each instalment is payable under regulation 19(1).

(3) The scheme manager may make a particular payment by direct credit transfer otherwise than in accordance with paragraph (1) if it appears to ▶<sup>5</sup>it◀ to be appropriate to do so for the purpose of paying any arrears.

(4) The arrangements under this regulation may be terminated—

- (a) by the beneficiary or his appointed representative, by notice in writing delivered or sent to the scheme manager; or
- (b) by the scheme manager if the arrangement seems to <sup>1</sup>it<sup>1</sup> to be no longer appropriate to the circumstances of the particular case.

<sup>1</sup>Words substituted in reg. 20(4)(b) by reg. 17(2)(f) of S.I. 2009/1851 as from 10.7.09.

(5) A direct credit transfer into the account of an appointed representative or of any person to whom an amount is paid with the consent of the beneficiary, shall be a good discharge to the scheme manager for any sum paid under these Regulations.

## ▶<sup>2</sup>PART 7

<sup>2</sup>Regs. 21-33 inserted by reg. 14 of S.I. 2010/1149 as from 2.4.10.

### VALUATION OF ASSETS AND LIABILITIES

#### Application of this Part

21.—(1) This Part applies to a qualifying pension scheme where—

- (a) the qualifying pension scheme has not been fully wound up;
- (b) the liabilities of that scheme to or in respect of all members and former members have not been discharged; and
- (c) the liabilities of the scheme to or in respect of all members and former members of the scheme have not been, or in the opinion of the scheme manager are unlikely to be, discharged by way of—
  - (i) binding commitments to purchase annuities;
  - (ii) the scheme manager having given approval to the trustees of the scheme to purchase annuities under section 286A;
  - (iii) a transfer of, or transfer payment in respect of, members' rights;
  - (iv) such other method of discharging any liability of the scheme for which the scheme manager has given approval under section 135(4C)(a); or
  - (v) state scheme premiums being paid pursuant to section 55 of the 1993 Act or state scheme rights having been restored under regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(b) or regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(c).

(2) This Part applies to a qualifying member of a qualifying pension scheme where—

- (a) the liabilities of that scheme to and in respect of that member have not been, or, in the opinion of the scheme manager, are unlikely to be, fully discharged as a result of any of the methods listed in paragraph (1)(c); or
- (b) the liabilities of the scheme to and in respect of that member have not been, or, in the opinion of the scheme manager, are unlikely to be, partially discharged by way of—
  - (i) a binding commitment to purchase an annuity; or
  - (ii) the scheme manager having given approval to the trustees of the scheme to purchase an annuity under section 286A.

(3) Notwithstanding paragraph (2)(b), this Part applies to a qualifying member of a qualifying pension scheme where the liabilities of the scheme for and in respect of that member have been partially discharged by one of the methods listed in paragraph (2)(b) if the only liabilities so discharged relate to benefits derived from the payment of voluntary contributions.

(a) As modified by these Regulations.

(b) S.I. 1996/1172. Regulation 49 was amended by S.I. 2005/3377 and 2008/1903 and section 1(2) of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

(c) S.R. 1996 No. 493. Regulation 49 was amended by S.I. 1996/3377 and 2008/1903 and Article 3(2) of, and Schedule 2 to, the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671).

(4) In this regulation, no account shall be taken of any money purchase benefits when determining the liabilities of the scheme.

#### **Scheme manager to obtain a valuation of assets and liabilities**

22.—(1) Where this Part applies, the scheme manager shall, when it considers it appropriate to do so, instruct the trustees or managers of a qualifying pension scheme to obtain for the scheme manager a valuation of the assets and liabilities of the pension scheme as at the calculation date.

(2) Subject to paragraph (3), where the trustees or managers are instructed to obtain a valuation under paragraph (1), they shall obtain the valuation and it shall include a valuation of the asset share—

- (a) of, or in respect of, each qualifying member to whom this Part applies; and
- (b) of any other person who is not—
  - (i) a qualifying member;
  - (ii) a survivor of a qualifying member; or
  - (iii) a surviving dependant of a qualifying member,

to whom the scheme has a liability to provide a pension or other benefit which is not a money purchase benefit.

(3) Where the scheme manager is of the opinion that it is not appropriate that a valuation in accordance with paragraph (2)(a) or (b) is obtained in relation to a particular person or category of persons, the valuation shall not include a valuation of that asset share, or, as the case may be, those asset shares.

(4) Where the scheme manager is of the opinion that it is not appropriate to obtain a valuation of some or all of the liabilities of the pension scheme in relation to a particular person or category of persons, the valuation shall not include a valuation of those liabilities.

(5) The valuations referred to in paragraphs (1) and (2) must be—

- (a) prepared and signed by a person (“the valuation actuary”)—
  - (i) who is—
    - (aa) a Fellow of the Faculty of Actuaries;
    - (bb) a Fellow of the Institute of Actuaries; or
    - (cc) a person approved by the Secretary of State; and
  - (ii) approved by the scheme manager for the purposes of carrying out a valuation under paragraph (1);

- (b) prepared in accordance with guidance published from time to time by the Secretary of State;
- (c) presented in such manner and form as set out in guidance published from time to time by the scheme manager; and
- (d) given to the scheme manager upon completion, together with such information as set out in guidance published from time to time by the Secretary of State.

(6) The scheme manager may direct the trustees or managers whom to appoint as valuation actuary.

(7) When valuing the assets of the scheme, the valuation actuary shall disregard—

- (a) any assets representing the value of any rights in respect of money purchase benefits under the scheme rules;
- (b) any assets held by or vested in the trustees or managers of the scheme which are to be used prior to transfer of the scheme’s assets in accordance with section 161 (as modified by Schedule 1 to these Regulations) to discharge liabilities in respect of voluntary contributions;

- (c) any assets, the value of which is required to discharge the scheme's pension liabilities to or in respect of a qualifying member to whom this Part does not apply;
- (d) any debt due, or treated as due, to the trustees or managers which, in the opinion of the scheme manager, is unlikely to be recovered without disproportionate cost or within a reasonable time;
- (e) an amount in respect of the value of any pre-6th April 1997 contract of insurance if—
  - (i) the trustees or managers have taken all reasonable steps to obtain information concerning that contract of insurance (whether by searching the records of the scheme or otherwise); and
  - (ii) the information that they provide concerning that contract of insurance is insufficient, in the opinion of the valuation actuary, to conduct a valuation;
- (f) any payments made to the trustees or managers of the qualifying pension scheme under regulation 14B (payments in relation to administration and other costs); and
- (g) any amount which is required to discharge expenses which have been, or will be reasonably incurred by the trustees or managers of the scheme.

(8) In paragraph (7)(e), “pre-6th April 1997 contract of insurance” means a contract of insurance—

- (a) which is a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8);
- (b) which was taken out before 6th April 1997; and
- (c) of which the trustees or managers are, or should reasonably be, aware.

(9) Where the scheme manager is of the opinion that it is not appropriate for an asset to be disregarded under paragraph (7)(c), the valuation actuary shall not disregard it.

### Valuation of assets

**23.—**(1) This regulation is subject to regulation 24.

(2) Subject to paragraphs (3) to (10), for the purposes of the valuation of the assets of a qualifying pension scheme the valuation actuary shall adopt the given value of the assets of the scheme stated in the relevant accounts as the value of those assets as at the calculation date.

(3) The value of a contract of insurance shall be—

- (a) where the contract of insurance is a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8), the value of the liability secured; or
- (b) subject to paragraph (4), where the contract of insurance is not a relevant contract of insurance within that meaning, the surrender value of the contract of insurance.

(4) Where a contract of insurance is not a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8) and it appears to the valuation actuary that the surrender value of the contract of insurance does not accurately reflect the actual value at the calculation date, the valuation actuary shall adopt such a value as appears to that actuary to be appropriate.

(5) Subject to paragraph (6), where—

- (a) a contribution notice has been issued under section 38 or 47 or Article 34 or 43;
- (b) a financial support direction has been issued under section 43 or Article 39; or
- (c) a restoration order has been made under section 52 or Article 48,

in relation to the qualifying pension scheme, the valuation actuary shall adopt the amount due to the scheme given in the notice, direction or order as the value of the asset.

(6) Where—

- (a) an amount is due under a notice, direction or order referred to in paragraph (5); and
- (b) the valuation actuary is of the opinion that the amount due in relation to the notice, direction or order will not be recouped in full by the scheme,

the valuation actuary shall adjust the value of the asset referred to in paragraph (5) to the value which, in the opinion of the valuation actuary is likely to be recouped by the trustees or managers of the qualifying pension scheme.

(7) Where the valuation actuary is of the opinion that any debt due, or treated as due, will be recouped in the future, the proportion of the debt that the valuation actuary expects to be recouped shall be treated as an asset of the scheme.

(8) Where—

- (a) the valuation actuary has been given notice; or
- (b) (i) the valuation actuary is of the opinion; and  
(ii) the scheme manager agrees with the valuation actuary's opinion,

that the value of any asset set out in the relevant accounts, that is not excluded from the valuation, is substantially different at the calculation date from that set out in the relevant accounts, the valuation actuary shall adjust the value of the asset to the market value of the asset at the calculation date.

(9) Where the valuation actuary has been given notice, or is of the opinion, that there exists an asset of the scheme which is not listed in the relevant accounts and which is not excluded from the valuation, the valuation actuary shall adopt such a value for the asset as appears to that actuary to be appropriate.

(10) Where the relevant accounts are not readily available and the scheme manager is of the opinion that it is not necessary for the purposes of this Part to require their preparation, the valuation actuary shall determine the value of the assets as at the calculation date on the basis of such information as the scheme manager considers appropriate.

(11) When acting under this regulation, the valuation actuary shall act in accordance with guidance issued by the Secretary of State.

#### **Power of the scheme manager to determine the value of an asset**

**24.—**(1) Where the scheme manager is of the opinion that any asset in the scheme has a particular value, the scheme manager may determine the value of that asset of the scheme.

(2) Where the scheme manager makes a determination in accordance with paragraph (1), the valuation actuary shall adopt the value determined by the scheme manager as the value of the asset as at the calculation date.

#### **Approval of valuation**

**25.—**(1) Where the scheme manager is satisfied that the valuation has been prepared in accordance with this Part, it must—

- (a) approve the valuation; and
- (b) notify the trustees or managers of the qualifying pension scheme of the approval.

(2) Where the scheme manager is not so satisfied, it must instruct the trustees or managers of the qualifying pension scheme to obtain another valuation under this Part.

(3) Where the scheme manager gives an instruction in accordance with paragraph (2), the trustees or managers of the qualifying pension scheme shall obtain another valuation and it shall be calculated as at the calculation date as determined in relation to the previous valuation.

### **Binding valuation**

**26.—**(1) A valuation obtained under regulation 22 is not binding until—

- (a) it is approved under regulation 25;
- (b) the period within which an application for a review of the approval of the valuation may be made under regulation 5 of the Financial Assistance Scheme (Internal Review) Regulations 2005 (time for making an application for a review of a reviewable determination) has expired; and
- (c) where an application referred to in sub-paragraph (b) is made—
  - (i) the internal review;
  - (ii) any appeal to the Ombudsman in respect of the approval; and
  - (iii) any appeal against any determinations or directions given or made by the Ombudsman in respect of such an appeal, has been finally disposed of.

(2) Where a valuation becomes binding under this regulation the scheme manager must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to—

- (a) the trustees or managers of the qualifying pension scheme; and
- (b) the Regulator.

(3) The notice given by the scheme manager under paragraph (2) shall contain—

- (a) a statement that it is a notice under regulation 26 of the Financial Assistance Scheme Regulations 2005;
- (b) the date on which the notice is given;
- (c) the name, address and pension scheme registration number of the qualifying pension scheme in respect of which the notice is given;
- (d) a statement that the valuation under Part 7 has become binding;
- (e) the date on which the notice was given;
- (f) the name of the employer in relation to the qualifying pension scheme in respect of which the notice is given; and
- (g) whether the notice given by the scheme manager contains any restricted information and, if so, the nature of the restriction.

## **PART 8**

### **SCHEME MANAGER FUNCTIONS AFTER A VALUATION**

#### **Scheme manager calculations after a valuation**

**27.—**(1) Subject to paragraph (2), where a valuation has been obtained in accordance with regulation 22, the scheme manager shall determine—

- (a) the annual rate of annuity (“the notional pension”) which could have been payable from the day determined in accordance with paragraphs (3) and (4) until the day determined in accordance with paragraph (5), if purchased on the calculation date with the asset share determined in accordance with regulation 22(2), in respect of—
  - (i) each qualifying member of the qualifying pension scheme to whom Part 7 applies; and
  - (ii) any other person who is not—
    - (aa) a qualifying member;

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- (bb) a survivor of a qualifying member; or
- (cc) a surviving dependant of a qualifying member,

to whom the scheme, as a result of the death of a qualifying member, has a liability to provide a pension or other benefit which is not a money purchase benefit;

- (b) where a qualifying member, who is not a qualifying member by virtue of regulation 15(5), has not died before the calculation date, the benefits that could have been purchased for a survivor and any surviving dependants with the asset share determined in accordance with regulation 22(2);
- (c) where a qualifying member to whom Part 7 applies has died before the calculation date, the annual rate of annuity (“the survivor notional pension”) which could have been purchased in respect of each survivor and surviving dependant of that qualifying member with the asset share determined in accordance with regulation 22(2); and
- (d) any annual increases to the notional pension and the survivor notional pension which could have been purchased with the asset share determined in accordance with regulation 22(2).

(2) Where the scheme manager is of the opinion that it is not appropriate that a determination in accordance with paragraph (1) is made in relation to a particular person or category of persons, the scheme manager shall not make a determination in accordance with paragraph (1) in relation to such a person or category of persons.

(3) Subject to paragraph (4), the day from which the notional pension could have been payable for the purposes of paragraph (1)(a) is—

- (a) where the notional pension is in respect of a qualifying member who, on the calculation date, is neither entitled to an ill health payment nor receiving a present payment from the scheme, the day on which the qualifying member attains normal retirement age;
- (b) where the notional pension is in respect of a qualifying member who is not a qualifying member by virtue of regulation 15(5) and who is, on the calculation date, entitled to an ill health payment or receiving a present payment from the scheme, the earlier of—
  - (i) the day on which the qualifying member began to receive a present payment from the scheme in accordance with scheme rules;
  - (ii) the day on which the qualifying member attains normal retirement age; and
  - (iii) the day on which the qualifying member became entitled to an ill health payment;
- (c) where the notional pension is in respect of a qualifying member who is a qualifying member by virtue of regulation 15(5), the day on which the qualifying member began to receive a present payment from the scheme in accordance with scheme rules;
- (d) where the notional pension is in respect of a person referred to in paragraph (1)(a)(ii), the day on which the liability to provide the pension or other benefit arose; and
- (e) where a survivor notional pension is being determined, the day after the day on which the qualifying member died.

(4) Where the day determined in accordance with paragraph (3)(b) or (c) falls before the day on which the qualifying pension scheme began to be wound up, the day for the purposes of paragraph (1)(a) is the day on which the qualifying pension scheme began to be wound up.

(5) The day on which the notional pension ceases to be payable for the purposes of paragraph (1)(a) is the day on which entitlement to a payment would end in accordance with these Regulations.

(6) The scheme manager shall make the determination in paragraph (1) by applying the asset share towards satisfying the amounts mentioned in paragraph (7) and—

- (a) if sub-paragraph (a) or (b) of paragraph (7) applies and the asset share is insufficient to satisfy the amounts referred to in that sub-paragraph in full, then the asset share must be applied first towards satisfying the amounts mentioned in paragraph (i) of sub-paragraph (a) or (b), as the case may be; and
  - (b) if the asset share exceeds the amount needed to satisfy those amounts in full, the remainder shall be applied so as to increase the notional pension.
- (7) The amounts referred to in paragraph (6) are–
- (a) where the notional pension is in respect of a qualifying member who was receiving a present payment from the qualifying pension scheme under the scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010–
    - (i) the pension and other benefits to which the qualifying member was entitled as at the later of–
      - (aa) the day on which the qualifying member became entitled to present payment of a pension under the scheme rules; or
      - (bb) the day before the day on which the scheme began to be wound up; and
    - (ii) annual increases on the amount determined in accordance with paragraph (i);
  - (b) where the notional pension is in respect of a person referred to in paragraph (1)(a)(ii)–
    - (i) the pension to which that person was entitled on the day on which the liability to provide the pension or other benefit arose; and
    - (ii) annual increases on the amount determined in accordance with paragraph (i); and
  - (c) where the notional pension is in respect of a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, the annuity which could be purchased in respect the qualifying member including–
    - (i) the pension and other benefits payable to the qualifying member from the date determined in accordance with paragraph (3);
    - (ii) benefits which could be purchased for any survivor and surviving dependant of the qualifying member; and
    - (iii) annual increases on the amounts determined in accordance with paragraphs (i) and (ii).

(8) In determining the amounts mentioned in paragraph (7)(c)(ii), the scheme manager shall have regard to the benefits that would be payable to any survivor or surviving dependant under Schedule 3, or, where the qualifying member is entitled to an ill health payment at the calculation date, under Schedule 5.

(9) The survivor notional pension referred to in paragraph (1)(c) shall be determined by applying the asset share towards satisfying the amounts mentioned in paragraph (10) and–

- (a) if sub-paragraph (a) of paragraph (10) applies and the asset share is insufficient to satisfy the amounts referred to in that sub-paragraph in full, then the asset share must be applied first towards satisfying the amounts mentioned in paragraph (i); and
- (b) if the asset share exceeds the amount needed to satisfy those amounts in full, the remainder shall be applied so as to increase the survivor notional pension.

(10) The amounts referred to in paragraph (9) are–

- (a) where the survivor, surviving dependant or the qualifying member in respect of the survivor or surviving dependant was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010–

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- (i) the pension and other benefits to which the survivor or surviving dependant would be entitled as at the day on which the survivor or surviving dependant became entitled to present payment of a pension under the scheme rules; and
- (ii) annual increases on the amount determined in accordance with paragraph (i); and
- (b) where the survivor, surviving dependant or qualifying member in respect of the survivor or surviving dependant was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, the annuity which could be purchased, including annual increases for the survivor or surviving dependant.

(11) In paragraphs (7)(a)(i) and (10)(a)(i), the pension and other benefits to which the asset share shall be applied in accordance with this regulation are—

- (a) the annual rate of pension to which the beneficiary was entitled in accordance with the scheme rules, after any commutation of benefits deriving from the scheme, after the day on which the scheme began to be wound up;
- (b) where the beneficiary is a qualifying member, the annual rate of pension to which any survivor or surviving dependant would be entitled in accordance with scheme rules in respect of the qualifying member;
- (c) any amount (including any lump sum) payable as a result of a member of the scheme dying within a period specified in the scheme rules which begins on the day on which the member became entitled to a pension from the scheme or, if later, the day on which the pension was first paid; and
- (d) any amount which, under the scheme rules, is payable to a beneficiary for a period which is shorter than the period in respect of which the remainder of the pension is payable.

(12) Where the scheme manager is required to determine annual increases for the purposes of this regulation, the scheme manager shall have regard to the way in which annual increases are determined under—

- (a) where paragraph (7)(c) or (10)(b) applies and—
  - (i) the beneficiary is not entitled to an ill health payment at the calculation date, paragraph 6 of Schedule 3; or
  - (ii) the beneficiary is entitled to an ill health payment at the calculation date, paragraph 6 of Schedule 5;
- (b) where paragraph (7)(a) or (10)(a) applies and—
  - (i) the beneficiary is not entitled to an ill health payment at the calculation date, paragraph 7 of Schedule 4; or
  - (ii) the beneficiary is entitled to an ill health payment at the calculation date, paragraph 7 of Schedule 6; and
- (c) paragraph 4 of Schedule 7, where paragraph (7)(b) applies.

(13) For the purposes of this regulation—

- (a) a qualifying member is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding that no payment has been received, if, prior to the coming into force of those Regulations—
  - (i) the qualifying member was entitled to payment under the scheme rules;
  - (ii) the trustees or managers of the scheme received confirmation from the qualifying member that payment should commence; and
  - (iii) the qualifying member's entitlement became payable, as a result of (i) and (ii) being satisfied; and
- (b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, notwithstanding

that no payment has been received, if, prior to the coming into force of those Regulations, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.

(14) This regulation is subject to regulation 28.

#### **Determination of certain asset shares, notional pensions and survivor notional pensions**

**28.—**(1) Where regulation 22(3) applies in any case, the scheme manager shall determine the asset share for the purposes of these Regulations in respect of any person to which that regulation applies, having regard to such matters as it considers relevant.

(2) Where regulation 27(2) applies in any case, the scheme manager shall determine the notional pension or survivor notional pension for the purposes of these Regulations in respect of any person to which that regulation applies, having regard to such matters as it considers relevant.

(3) Paragraph (4) applies where—

- (a) a qualifying member commutes a portion of their pension from the qualifying scheme for a lump sum after the calculation date and before the day on which the transfer notice is given; and
- (b) a qualifying member, prior to attaining normal retirement age or becoming entitled to an ill health payment, begins to receive a present payment from the qualifying scheme after the calculation date and before the day on which the transfer notice is given.

(4) Where this paragraph applies, the scheme manager may redetermine the notional pension having regard to—

- (a) where paragraph (3)(a) applies, the amount of the lump sum;
- (b) where paragraph (3)(b) applies—
  - (i) the qualifying member's normal retirement age; and
  - (ii) the date on which the qualifying member began to receive a present payment from the scheme; and
- (c) such other matters as the scheme manager considers relevant.

#### **Transfer notice**

**29.—**(1) Where a valuation has become binding under regulation 26 and the scheme manager is satisfied that it is an appropriate time for the notice to be given, the scheme manager must give the trustees or managers of the qualifying pension scheme a notice (a "transfer notice").

(2) Where a transfer notice is given under this regulation the scheme manager—

- (a) must give a copy of the transfer notice to the Regulator; and
- (b) may give a copy of the transfer notice to any other person to whom, in the opinion of the scheme manager, the transfer notice is relevant.

(3) Where the trustees or managers have been discharged from their obligations to provide pensions or other benefits to or in respect of any persons in accordance with section 161 as modified, the scheme manager shall notify those persons, or where such person has an appointed representative, that appointed representative within 28 days of the transfer notice being given.

#### **Terms and conditions of contracts**

**30.—**(1) Where a transfer notice has been given to the trustees or managers of a qualifying pension scheme and the scheme manager considers that a contract relating to the property, rights and liabilities of the scheme contains terms or conditions that the scheme manager considers onerous, the scheme manager may—

- (a) disapply any such term or condition; or

- (b) substitute for the term or condition, a term or condition that the scheme manager considers to be reasonable.

(2) Where—

- (a) any rights or liabilities under a relevant contract of insurance are transferred to the Secretary of State by virtue of section 161 of, and Schedule 6 to, the Pensions Act as modified; and
- (b) as a result of the transfer, the Secretary of State is required, by reason of a term of that contract, to pay a specified amount or specified amounts to a specified person who, immediately before the time the transfer notice was given, was a member of the scheme or a person entitled to benefits in respect of such a member,

the scheme manager may modify that term of the contract so that any benefit under that contract shall be payable to the Secretary of State.

PART 9

MISCELLANEOUS PAYMENTS AND RESIDUAL ASSETS

**Payments where amounts relating to money purchase benefits are transferred to the Secretary of State**

**31.—**(1) Subject to paragraph (3), where the property transferred to the Secretary of State under section 161 (as modified by Schedule 1 to these Regulations) includes property representing the value of rights in respect of money purchase benefits under the scheme rules, the scheme manager must make arrangements to facilitate a payment or payments to be made to any person in respect of whom the qualifying pension scheme held the assets.

(2) The scheme manager must be satisfied that the arrangement made under paragraph (1) is made in respect of the full value of the assets transferred as at the date the arrangement is made.

(3) Where the person in respect of whom the assets were held has died, the arrangement under paragraph (1) shall be made in respect of the estate of the deceased person.

**Payments to estates where a person in receipt of a payment from a scheme dies prior to entitlement and prior to transfer of assets**

**32.—**(1) This regulation applies where—

- (a) a person in respect of whom an asset share has been determined dies on or after the calculation date and prior to the day on which the transfer notice is given;
- (b) that person was not entitled to an annual payment or an ill health payment on the day on which that person died;
- (c) that person was receiving a present payment from the scheme immediately before the day on which the person died; and
- (d) the scheme manager is satisfied that the amount of any interim pension from the scheme paid to that person in respect of any year from the later of—
  - (i) the day on which the person began to receive a payment from the scheme; and
  - (ii) the day on which the scheme began to wind up,

until the day on which the person died is lower than the sum of the notional pension and any annual increases which the scheme manager has determined under regulation 27 could be paid, in respect of that year.

(2) Where this regulation applies, the scheme manager may, after the transfer notice has been given, make a payment to the person's estate, having regard to—

- (a) the amount of any interim pension which was paid to the person;
- (b) the amount of the sum of—
  - (i) the notional pension; and
  - (ii) any annual increases determined in accordance with regulation 27; and
- (c) such other matters as the scheme manager considers relevant.

**Transfer of residual assets to the Secretary of State where Part 7 does not apply**

**33.**—(1) This regulation applies where—

- (a) Part 7 does not apply to a qualifying pension scheme because the liabilities to or in respect of all members and former members have been discharged;
- (b) the trustees or managers continue to hold assets for the scheme;
- (c) the trustees or managers have notified the scheme manager in writing that they wish to transfer the assets to the Secretary of State; and
- (d) the scheme manager is satisfied that—
  - (i) either—
    - (aa) the cost of distributing the remaining assets to the members or former members of the scheme would be disproportionate; or
    - (bb) the distribution of the remaining assets would not be of overall benefit to the members or former members of the scheme;
  - (ii) the assets can be transferred to the Secretary of State; and
  - (iii) it is appropriate that the assets are transferred to the Secretary of State.

(2) Where this regulation applies, the trustees or managers of a qualifying pension scheme to which Part 7 does not apply may transfer the remaining assets to the Secretary of State at such time as the Secretary of State may decide. ◀

Signed by authority of the Secretary of State for Work and Pensions.

19th July 2005

*Philip A. Hunt*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

## SCHEDULE 1

Regulation 4(1)

MODIFICATION OF CERTAIN PROVISIONS OF PARTS 1 AND 2 OF  
THE ACT

**1.** In section 68 (power for the Regulator to collect information relevant to the Board of the Pension Protection Fund), for “the Board of the Pension Protection Fund”, substitute “the scheme manager of the financial assistance scheme which are conferred on ►<sup>1</sup>it◀ by regulations made under, or by virtue of, section 286”.

<sup>1</sup>Words substituted in paras. 1 & 2 & paras. 3ZA-3ZE inserted in Sch. 1 by regs. 7(4)(b) & 18(a) of S.I. 2009/1851 as from 10.7.09.

**2.** In section 85 (disclosure by the Regulator for facilitating the exercise of functions by the Board)–

- (a) for “Section 82 does not preclude” substitute “Neither section 82 nor Article 77 of the Pensions (Northern Ireland) Order 2005 precludes”;
- (b) for the words “the Board of the Pension Protection Fund to exercise its functions”, substitute “the scheme manager of the financial assistance scheme to exercise functions conferred on ►<sup>1</sup>it◀ by regulations made under or by virtue of section 286, and Part 2 of the Pensions (Northern Ireland) Order 2005 shall be read accordingly”.

**3.** In section 88(4) (disclosure of tax information by the Regulator), after “subsection (3)” insert “or as mentioned in Article 83(3) of the Pensions (Northern Ireland) Order 2005”.

►<sup>1</sup>**3ZA.** In section 113 (investment of funds)–

- (a) at the beginning of subsection (1), insert “Subject to subsection (1A),”; and
- (b) after subsection (1), insert–  
“**(1A)** The Board may hold any grant received in accordance with regulation 5(3) of the Financial Assistance Scheme Regulations 2005(a) (scheme manager) in an interest-bearing account but may not otherwise invest any such grant”.

**3ZB.** After section 114(4) (investment principles), insert–

“**(4A)** A statement of investment principles need not cover investments made in accordance with section 113(1A)”.

**3ZC.** In section 115(1)(a) (borrowing), after “any of its functions”, insert “except its functions relating to the financial assistance scheme”.

**3ZD.** In section 117(1)(b) (administration levy), after “section 116”, insert “except where such expenditure relates to the financial assistance scheme”.

**3ZE.** In section 119 (annual reports to Secretary of State)–

- (a) in subsection (2)–
  - (i) after “the Board” insert “in relation to the financial assistance scheme”;
  - (ii) for “the report” substitute “any part of the report”; and
  - (iii) after “that section” insert “which relates to the financial assistance scheme”;
- (b) in subsection (3), after paragraph (c) insert–  
“(d) the operation of the financial assistance scheme including the number of persons who have received payments under the Financial Assistance Scheme Regulations 2005 and the total amount of those payments.”; and
- (c) in subsection (6)(a), for “the date on which the Board is established” substitute “the date on which the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 come into force”.◀

<sup>2</sup>Para. 3A inserted by reg. 13 of S.I. 2008/1903 as from 17.7.08.

►<sup>2</sup>**3A.** In section 134 (directions)–

- (a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2) which has not been fully wound up”;

(a) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241 and 2009/792.

- (b) in subsection (2), for the words from the beginning to “is kept to a minimum” substitute “With a view to ensuring that any reduction in the scheme’s assets is kept to a minimum or that the assets of the scheme are invested in a way which, in the opinion of the scheme manager, is appropriate”;
- <sup>1</sup>(ba) in subsection (2), after paragraph (b) insert—  
“(ba) the determination of interim pensions;”◀
- (c) in subsections (2) and (4), for “the Board”, substitute “the scheme manager”; and
- <sup>1</sup>(ca) in subsection (3), before paragraph (a) insert—  
(za) “interim pension” has the meaning given by regulations under section 286(1);”◀
- (d) in subsection (3), after paragraph (a)(i) insert—  
“(ia) a professional adviser to the scheme;  
(ib) any other person appearing to the scheme manager to be a person who carries out, or is likely to carry out, activities relevant to the use of the assets of the scheme;”◀
- <sup>1</sup>**3B.** In section 135 (restrictions on winding up, discharge of liabilities etc)—
- (a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2)”;
- (b) omit subsections (2), (3), (5) to (7) and (11);
- (c) in subsection (4)—  
(i) for the words before paragraph (a) substitute “Except where subsection (4A) applies”—  
(ii) in paragraph (a), for “member’s” substitute “qualifying member’s”; and  
(iii) for paragraph (b) substitute—  
“(b) no steps may be taken to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment which would be—  
(i) a winding-up lump sum under paragraph 10 of Schedule 29 to the Finance Act 2004 (c. 12); or  
(ii) a trivial commutation lump sum under paragraph 7 or 7A of that Schedule.”;
- (d) after subsection (4) insert—  
“(4A) This subsection applies where—  
(a) before 26th September 2007 the trustees or managers entered into a binding commitment to purchase an annuity for the qualifying member;  
(b) the purchase of an annuity has been approved by the scheme manager under section 286A(2)(b);  
(c) the transfer or discharge of liability has been approved by the scheme manager under subsection (4C) on the application of the trustees or managers of the scheme and any condition imposed under subsection (4D) is satisfied;  
(d) before the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force, the trustees or managers of the scheme offered a trivial commutation lump sum to the qualifying member;  
(e) before the date on which those Regulations came into force—  
(i) an application under section 93A of the Pension Schemes Act 1993<sup>(a)</sup> or section 89A of the Pension Schemes (Northern Ireland) Act 1993<sup>(b)</sup> (salary related schemes: right to statement of

<sup>1</sup>Sub-paragraphs (ba) & (ca) added & paras. 3B-3E inserted in Schedule 1 by reg. 15(a) & (b) of S.I. 2010/1149 as from 2.4.10.

(a) 1993 c. 48.

(b) 1993 c. 49.

- entitlement) for a statement of entitlement had been received by the trustees or managers of the scheme for the qualifying member;
- (ii) the trustees or managers of the scheme have provided the qualifying member with such a statement; and
  - (iii) the qualifying member has made, within the relevant period, and not withdrawn, an application under section 95 of the Pension Schemes Act 1993 or section 91 of the Pension Schemes (Northern Ireland) Act 1993 (ways of taking right to cash equivalent);
- (f) the transfer or discharge of liability relates only to money purchase benefits; or
- (g) the transfer or discharge of liability relates only to benefits derived from the payment of voluntary contributions.
- (4B) For the purposes of subsection (4A)(e), “the relevant period” means—
- (a) where section 94(1)(aa) of the Pension Schemes Act 1993 or section 90(1)(aa) of the Pension Schemes (Northern Ireland) Act 1993 (right to cash equivalent) applies, three months beginning with the guarantee date, as defined in those Acts, in respect of the statement of entitlement; or
  - (b) where regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations 1996(a) or regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996(b) (extension of time within which a member may exercise option to take a guaranteed cash equivalent) applies, the three month period for making a relevant application determined in accordance with that regulation.
- (4C) The scheme manager may approve a transfer referred to in subsection (4)(a) or any steps to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment referred to in subsection (4)(b) if the scheme manager thinks it appropriate to do so.
- (4D) An approval under subsection (4C) may be made subject to such conditions (if any) as the scheme manager thinks appropriate.”; and (e) in subsection (9) for “Board” substitute “scheme manager”.
- 3C.** In section 136 (power to validate contraventions of section 135)—
- (a) in each place it occurs, for “Board” substitute “scheme manager”;
  - (b) in subsection (1) for the words “to do so is consistent” to the end, substitute “it is appropriate to do so”;
  - (c) in subsection (2) omit paragraphs (a), (c) and (d);
  - (d) after subsection (2) insert—
 

“(2A) The scheme manager may copy the notice under subsection (2) to any other person to whom, in the opinion of the scheme manager, the determination is relevant.”;
  - (e) in subsection (3) for “Board’s” substitute “scheme manager’s”; and
  - (f) omit subsections (4) and (5).
- 3D.** In section 161 (effect of Board assuming responsibility for a scheme)—
- (a) in subsection (1)—
    - (i) after “given” insert “under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”;
    - (ii) for “an eligible scheme” substitute “a qualifying pension scheme under section 286(2)”;
    - (iii) for the words from “the Board” to the end substitute—
      - “(a) the property, rights and liabilities of the scheme are transferred to the Secretary of State, without further assurance, with effect from the time the trustees or managers are given the transfer notice,

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(a) S.I. 1996/1847.

(b) S.R. 1996/No. 619.

- (b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and
- (c) any liabilities other than those transferred under paragraph (a) or liabilities in respect of money purchase benefits referred to in subsection (4A) are discharged.”;
- (b) omit subsection (2);
- (c) in subsection (3)–
  - (i) after “liabilities of the scheme” insert “means any liabilities which are liabilities of the scheme as a direct result of the rights or property referred to in subsection (1)(a) being held by or vested in the trustees or managers of the scheme, but”; and
  - (ii) omit the words from “, other than” to the end;
- (d) in subsection (4)–
  - (i) after the words in brackets insert “which are not pensions or benefits in respect of money purchase benefits referred to in subsection (4A)”; and
  - (ii) omit paragraph (b) and the “and” which precedes it;
- (e) after subsection (4) insert–
 

“(4A) Subsection (1)(a) does not transfer any property which is, or rights which are, held by or vested in the trustees or managers of the scheme in respect of money purchase benefits where the scheme manager is satisfied that appropriate arrangements have been made or are being made for the discharge of the scheme’s liabilities relating to money purchase benefits.

(4B) The trustees or managers of the scheme may discharge their liabilities in respect of money purchase benefits irrespective of any rules of the scheme which may provide that such liabilities must be discharged together with benefits which are not money purchase benefits.”;
- (f) in subsection (7) for “Board” substitute–
  - (i) where it first occurs, “scheme manager”; and
  - (ii) for the subsequent occurrences, “Secretary of State”;
- (g) after subsection (7) insert–
 

“(7A) Neither paragraph (b) nor (c) of subsection (1) affects any rights transferred to the Secretary of State in accordance with paragraph (a) of that subsection.”; and
- (h) in each place it occurs, for “subsection (2)” substitute “subsection (1)”.

**3E.** In section 165 (guaranteed minimum pensions)–

- (a) in subsection (1)–
  - (i) for “Board” substitute “scheme manager”;
  - (ii) for “Commissioners of Inland Revenue” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
  - (iii) for “it assuming responsibility for an eligible scheme in accordance with this Chapter” substitute “the scheme manager giving a transfer notice under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”; and
- (b) after subsection (3) insert–
 

“(4) In subsection (8) of that section (as inserted by subsection (3) above) for “on the Board of the Pension Protection Fund assuming responsibility for the scheme” substitute “when a transfer notice was given under regulation 29 of the Financial Assistance Scheme Regulations 2005”.”◀

**4.** In section 168 (administration of compensation payable by the Board)–

- (a) in subsection (1), for “this Chapter” substitute “the financial assistance scheme established by regulations under section 286”;
- (b) for subsection (2), substitute–
 

“(2) Regulations under subsection (1) may, in particular, make provision–

  - (a) for the recovery of amounts paid by the scheme manager of the financial assistance scheme in excess of entitlement;

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- (b) specifying the circumstances in which payments from the financial assistance scheme can be suspended.”; and
- (c) omit subsection (3).

**5.** In section 190 (information to be provided to the Board etc.)–▶<sup>1</sup>(a) in subsection (1), for “the Board” substitute “the scheme manager”◀

“<sup>1</sup>(a) to the scheme manager, or

(b) to a person–

- (i) with whom the scheme manager has made arrangements for any of his functions to be exercised on his behalf, and
- (ii) who is authorised by the scheme manager for the purposes of the regulations,”; and

(b) in subsection (2), for “of entitlement to compensation under Chapter 3 of this Part” substitute “that a person is entitled to a payment from the financial assistance scheme”.

▶<sup>2</sup>**6.** In section 191 (notices requiring provision of information to the Board)–

(a) in subsection (1)(b), after “the Board’s” insert “or scheme manager’s”;

(b) in subsection (2)–

(i) before paragraph (a), insert–

“(za) the scheme manager, in relation to the scheme manager’s functions,”;

(ii) in paragraph (a), after “the Board,” insert “in relation to the Board’s functions,”; and

(iii) in paragraph (b), after “the Board” insert “or scheme manager”; and

(c) in subsection (3)–

(i) omit “and” at the end of paragraph (d);

(ii) after paragraph (d), insert–

“(da) in the case of a wound up scheme, any insurance company (within the meaning of the Financial Assistance Scheme Regulations 2005(a)) which is paying annuities to former members of the scheme, and”;

(iii) in paragraph (e)–

(aa) after “the Board” insert “, scheme manager”; and

(bb) after “the Board’s” insert “or scheme manager’s”.◀

**7.** In section 192 (entry of premises to enable performance of functions by the Board)–

(a) for “the Board”, in each place, substitute “the scheme manager”;

(b) in subsection (1)(f), for “the Board’s” substitute “the scheme manager’s”; and

(c) in subsection (6), for “The Board” substitute “The scheme manager”.

**8.** In section 194 (warrants to enforce entry of premises and obtaining of documents by, or on behalf, of the Board)–

(a) for “the Board”, in each place, substitute “the scheme manager”;

(b) omit in both places “, or any corresponding provision in force in Northern Ireland”;

(c) in subsection (1), after “information on oath” insert “or, in Northern Ireland, on complaint on oath”;

(d) in subsection (1)(b), for “the Board’s” substitute “the scheme manager’s”;

(e) in subsection (2)(a), after “the information” insert “or complaint”;

(f) in subsection (6), for “The Board” substitute “The scheme manager”.

<sup>1</sup>Words substituted in para. 5(a) in Sch. 1 by regs. 18(b) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Para. 6 substituted by reg. 13 of S.I. 2008/1903 as from 17.7.08.

(a) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

9. In section 195(1)(b) (offence of providing false or misleading information to the Board), for the words from “by the Board” to the end of that paragraph substitute “by the scheme manager for the purposes of exercising ►<sup>1</sup>its◄ functions”.

10. In section 196 (use of information by the Board)–

- (a) for “the Board”, in each place, substitute “the scheme manager”; and
- (b) ►<sup>1</sup>◄

11. In section 197 (restricted information)–

- (a) in subsections (1) and (3), after “the Board”, in each place, insert “or the scheme manager”;
- <sup>1</sup>(ab) in section (2), before paragraph (a) insert–
  - “(za) regulation 6A of the Financial Assistance Scheme Regulations 2005,”◄
- (b) in subsection (4), after “its functions” insert “or by the scheme manager in the exercise of ►<sup>1</sup>its◄ functions”;
- (c) in subsection (6)(a), after “that section” insert “(disregarding any modifications of that section made by the Financial Assistance Scheme Regulations 2005)”; and
- (d) after subsection (6), insert–
  - “(6A) Information which–
    - (a) is obtained under section 191 by a person authorised under subsection (2)(b) of that section, but
    - (b) if obtained by the scheme manager, would be restricted information, is treated for the purposes of subsections (1) and (3) and sections 198 to 201 and 203 as restricted information which the person has received from the scheme manager.”.

<sup>1</sup>Words substituted in paras. 9, 11(b) & 12(a) & (b), para. 10(b) deleted & para. 11(ab) inserted by regs. 7(2)(b) & 18(c) & (d) of S.I. 2009/1851 as from 10.7.09.

12. In section 198 (disclosure by the Board of restricted information for facilitating exercise of functions by the Board)–

- (a) at the end of subsection (1), add “or the scheme manager to exercise ►<sup>1</sup>its◄ functions”;
- (b) in subsection (2)–
  - (i) after “its functions”, insert “or the scheme manager properly to exercise any of ►<sup>1</sup>its◄ functions”; and
  - (ii) after “the Board”, in the second place, insert “or, as the case may be, the scheme manager”; and
- (c) in subsection (3)–
  - (i) after “the Board”, in both places, insert “or, as the case may be, the scheme manager”; and
  - (ii) for “he” substitute “that person”.

13. In section 200(1) (disclosure by the Board of restricted information for facilitating the exercise of functions by other supervisory authorities)–

- (a) after “the Board”, in the first place, insert “or the scheme manager”; and
- (b) after “the Board”, in the second place, insert “or, as the case may be, the scheme manager”.

14. In section 201 (other permitted disclosures of restricted information by the Board)–

- (a) in subsection (1)–
  - (i) after “the Board”, in the first place, insert “or the scheme manager”;
  - (ii) after “the Board”, in the second place, insert “or, as the case may be, the scheme manager”;
- (b) in subsection (2), after “the Board”, in both places, insert “or the scheme manager”;

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- (c) in subsection (2)(d), for “it has a right” substitute “the Board or the scheme manager has a right”;
- (d) in subsection (8), for “with the consent of the Board” substitute–

“ –

- (a) in a case where the disclosure under that subsection was made by the Board, with the consent of the Board, and
- (b) in a case where the disclosure under that subsection was made by the scheme manager, with <sup>1</sup>its consent”;

<sup>1</sup>In Sch. 1 words substituted in paras. 14(d) & (e) & paras. 14(f)(i) & (iii) omitted by regs. 7(2)(b) & 18(e) of S.I. 2009/1851 as from 10.7.09.

- (e) for subsection (9)(a), substitute–

- “(a) in a case where the disclosure under that subsection was made by the Board, with the consent of the Board,
- (aa) in a case where the disclosure under that subsection was made by the scheme manager, with <sup>1</sup>its consent, and”;

- (f) in subsection (10)–

(i) <sup>1</sup>◀

(ii) after “the Board” insert “or, as the case may be, the scheme manager”;

(iii) <sup>1</sup>◀

<sup>2</sup>Para. 14A inserted by reg. 15(c) of S.I. 2010/1149 as from 2.4.10.

- <sup>2</sup>14A. In section 202 (tax information)–

- (a) in each place it occurs, for “the Board” substitute “the scheme manager”;
- (b) in subsection (1) for “tax functions” substitute “a function of the Revenue and Customs”;
- (c) in subsection (2) for “section 182 of the Finance Act 1989 (c. 26)” substitute “sections 18 and 19 of the Commissioners for Revenue and Customs Act 2005 (c. 11)”;
- (d) in subsection (4) for “Commissioners of Inland Revenue or the Commissioners of Customs and Excise” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
- (e) for subsection (5) substitute–

“(5) In subsection (1), “a function of the Revenue and Customs” has the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005.◀

- 15. In section 203 (provision of information to members of schemes etc. by the Board)–

- (a) in subsection (1), after “the Board” insert “or the scheme manager”;
- (b) in subsections (3)(c), (5)(b) and (c) and (6)(c), after “the Board”, in each place, insert “or, as the case may be, the scheme manager”;
- (c) after “the Board’s”, in each place, insert “or the scheme manager’s”;
- (d) omit “or” at the end of subsection (1)(b)(ii) and insert after that subparagraph–
  - “(iia) relating to any determination made in relation to the financial assistance scheme, or”;
- (e) in subsection (2), after “Chapter 3” insert “or, as the case may be, to a payment from the financial assistance scheme”;
- (f) in subsection (4)–
  - (i) in paragraph (a), after “who is” insert “or was”;
  - (ii) in paragraph (b), after “member” insert “or former member”;
- (g) after subsection (6)(a)(iv), insert–
  - “(v) in the case of a wound up scheme, any insurance company (within the meaning in the Financial Assistance Scheme Regulations 2005) which is paying annuities to former members of the scheme,”.

- 16. In section 204 (interpretation of sections 190 to 203)–

- (a) after subsection (2), insert–

“(2A) The “scheme manager” is the person who manages the financial assistance scheme.

(2B) The “financial assistance scheme” is the scheme established by regulations under section 286.”; and

(b) after subsection (3), add–

“(4) Where the scheme manager has functions in relation to a scheme which is wound up, any reference to a trustee, manager, professional adviser or employer in relation to the scheme is to be read as reference to a person who held that position in relation to the scheme before it wound up”.

►<sup>1</sup>17. In paragraph 18(2) of Schedule 5 (delegation)–

(a) after sub-paragraph (g), insert–

►<sup>2</sup>(zga) Paragraphs 6A, 7(1) and 8 of Schedule 6 (transfer of property, rights and liabilities to the Board) as modified; ◀

“(ga) regulation 9(1)(d) of the Financial Assistance Scheme Regulations 2005 (“the 2005 Regulations”) (receiving notification of the details prescribed in regulation 14);

(gb) regulation 14A of the 2005 Regulations (working with qualifying pension schemes);

(gc) regulations 17 to 20 of, and ►<sup>2</sup>Schedules 2 to 7◀ to, the 2005 Regulations in so far as those provisions relate to–

(i) the determination of the amount of payments to beneficiaries,

(ii) paying instalments of payments to beneficiaries (including non-payment where the scheme manager decides to suspend payments in accordance with regulation 8 of the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(a)), or

(iii) receiving information pursuant to notification requirements;

(gd) the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 except–

(i) regulation 3(2) (notification following determination of whether or not a scheme is a qualifying pension scheme), and

(ii) regulation 8 (suspension of payments) in so far as that regulation provides for the scheme manager to decide to suspend payments or not continue any such suspension;

(ge) regulations 3 (notice of a reviewable determination), 14(d) (dealing with matters arising out of a review decision) and 16 (notice of a review decision or a subsequent review decision) of the Financial Assistance Scheme (Internal Review) Regulations 2005(b);

(gf) regulation 23(6) and (8) (taking or refraining from taking such steps as directed by the Ombudsman) of the Financial Assistance Scheme (Appeals) Regulations 2005(c);”;

►<sup>2</sup>(gg) regulation 27 of the 2005 Regulations (scheme manager calculations after a valuation);

(gh) regulation 28 of the 2005 Regulations (determination of certain asset shares, notional pensions and survivor notional pensions);

(gi) regulation 31 of the 2005 Regulations (payments where amounts relating to money purchase benefits are transferred to the Secretary of State); ◀

(b) in sub-paragraph (h), for the words “paragraphs (a) to (g)” substitute “paragraphs (a) to ►<sup>2</sup>(gi)◀”.

**18.** In paragraph 22(7)(a) of Schedule 5 (accounts), for “the date on which the Board is established” substitute “the date on which the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 come into force”. ◀

<sup>1</sup>In Sch. 1 paras. 17 & 18 inserted by reg. 18(f) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Words inserted in reg. 17 by reg. 15(d)(i) of S.I. 2010/1149 as from 2.4.10.

(a) S.I. 2005/2189 as amended by S.I. 2005/3256, 2007/3581, 2008/1903 and 2009/792.

(b) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903 and 2009/792.

(c) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683 and 2009/792.

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<sup>1</sup>Para. 19 inserted by reg. 15(e) of S.I. 2010/1149 as from 2.4.10.

►<sup>1</sup>19. In Schedule 6 (transfer of property, rights and liabilities to the Board)–

(a) after paragraph 3(2) insert–

“(3) Where any liabilities in respect of an existing or future cause of action are not transferred as a result of sub-paragraph (2), the trustees or managers are not discharged from any obligations in respect of such causes of action.”;

(b) after paragraph 5 insert–

“5A. Any contract which does not form part of any rights or liabilities transferred to the Secretary of State shall be treated as terminated.”;

(c) in paragraph 6 for the words from “so far as necessary” to the end substitute–

“(a) so far as necessary for the purposes of giving effect to the transfer as a reference to the Secretary of State, and

(b) so far as necessary for the purposes of giving effect to paragraph 6A(1) as a reference to the scheme manager.”;

(d) after paragraph 6 insert–

“6A.—(1) The rights, powers and obligations of the Secretary of State in relation to the property, rights and liabilities are exercisable by the scheme manager without limitation.

(2) Where, by virtue of sub-paragraph (1), any amount becomes payable, or is to be paid, to the scheme manager, that amount must be paid to the Secretary of State.”;

(e) in paragraph 7(1) in the first place in which it occurs for “Board” substitute “scheme manager”;

(f) in all other places in which it occurs for “Board” substitute “Secretary of State”; and

(g) after paragraph 7 add–

“8.—(1) Where, by virtue of paragraph 3(1), an application to the Pensions Ombudsman under Part 10 of the Pension Schemes Act 1993 (c. 48) or Part 10 of the Pension Schemes (Northern Ireland) Act 1993 (c. 49) is to be continued by or against the Secretary of State, any reference in section 146 of the Pension Schemes Act 1993 or section 142 of the Pension Schemes (Northern Ireland) Act 1993 to the trustees or managers of an occupational pension scheme shall have effect, so far as necessary, for the purpose of giving effect to paragraph 3(1), as a reference to the Secretary of State.

(2) Where, as a result of such an application being continued against the Secretary of State, a direction is given by the Ombudsman under section 151 of the Pension Schemes Act 1993 or section 147 of the Pension Schemes (Northern Ireland) Act 1993, the Secretary of State may require the scheme manager to carry out a review under regulation 10 of the Financial Assistance Scheme (Internal Review) Regulations 2005.”◀

SCHEDULE 2

Regulations 17 and 18(5)

DETERMINATION OF ANNUAL AND INITIAL PAYMENTS

**Introductory**

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment or of an initial payment payable to or in respect of qualifying members of qualifying pension schemes.

(2) In this Schedule—

▶<sup>1</sup>“appropriate person” has the meaning given by regulation 2(1) of the FAS Information and Payments Regulations (interpretation);◀

▶<sup>2</sup>◀

▶<sup>3</sup>◀

▶<sup>4</sup>◀

▶<sup>1</sup>“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(a)◀;

“guaranteed minimum pension” has the meaning given in section 8(2) of the 1993 Act;

▶<sup>1</sup>“relevant information” means any information—

- (a) that is described in any of paragraphs (j) to (l) of the fourth item of the table in paragraph 1(2) of Schedule 1 to the FAS Information and Payments Regulations (information to be provided by appropriate persons);
- (b) that is to be provided by an appropriate person to the scheme manager in accordance with regulation 3(3)(a) of those Regulations; and
- (c) from which the amount of the actual pension or interim pension of a qualifying member, or of a survivor of a qualifying member, may be derived;◀

▶<sup>5</sup>◀

▶<sup>5</sup>“revalued notional pension” shall be construed in accordance with regulation 17(10).◀

(3) ▶<sup>3</sup>Paragraphs 2 to 5B◀ are subject to paragraphs 6 to 9.

(4)–(5) ▶<sup>6</sup>◀

*Para. 1(4) & (5), as it stands without amendment by reg. 7(3) of S.I. 2008/1432, is reproduced below for use where the transition pensions of reg. 8 ibid apply:-*

▶<sup>7</sup>(4) In this Schedule, “normal retirement age” means, subject to sub-paragraph (5), in relation to a member of an occupational pension scheme, the age specified in the rules of that scheme at which that member will normally retire.

(5) Where the normal retirement age—

- (a) determined in accordance with sub-paragraph (4) is more than 65, that age shall be 65;
- (b) cannot be determined in accordance with sub-paragraph (4) from the rules of the qualifying pension scheme, that age shall be such age as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.◀

**Actual pension**

2.—▶<sup>8</sup>(1) In this Schedule, “actual pension” means, subject to ▶<sup>5</sup>sub-paragraphs (3) to (4)◀ and paragraph 2A, the annual rate of annuity which has been, can be or could have been, paid to the beneficiary as at the later of—

- (a) the day from which the beneficiary is entitled to an annual payment; or

<sup>1</sup>Defns. of “appropriate person” substituted, defns. of “the FAS Information and Payment Regulations” & “relevant information” inserted in para. 1(2) by reg. 4(6)(a)(ii) of S.I. 2005/3256 as from 24.11.05.

<sup>2</sup>Defn. of “the certification date” omitted by reg. 14(a) of S.I. 2008/1903 as from 17.7.08.

<sup>3</sup>Defn. of “the crystallisation date” omitted & words substituted in para. 1(3) by reg. 19(a) & (b) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Defns. of “Group 1...”, “Group 2 ...” & “Group 3...” omitted by reg. 7(1) of S.I. 2007/3581 as from 19.12.07.

<sup>5</sup>Defn. of “scheme rules” omitted and defn. of “revalued notional pension” inserted & words added to para. 2(1) by reg. 16(a)(i) & (ii) & (b) of S.I. 2010/1149 as from 2.4.10.

<sup>6</sup>Para. 1(4) & (5) omitted by reg. 7 of S.I. 2008/1432 as from 4.6.08.

<sup>7</sup>Paras. (4) & (5) inserted by reg. 7(2) of S.I. 2007/3581 as from 19.12.07.

<sup>8</sup>Para. 2(1) substituted by reg. 20(a) of S.I. 2009/1851 as from 10.7.09.

(a) S.I. 2005/2189 as amended by regulation 6 of these Regulations.

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(b) the day on which the qualifying pension scheme began to be wound up, as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has, or had, been determined.◀

<sup>1</sup>Sub-paras. (1A) and (3B-3K) inserted by regs. 16(b)(ii) & (iii) of S.I. 2010/1149 as from 2.4.10.

▶<sup>1</sup>(1A) For the purposes of sub-paragraph (1), where a transfer notice has been given in respect of a qualifying pension scheme, no assets which are transferred to the Secretary of State shall be treated as being available to discharge the liability in respect of any qualifying member of that scheme from the day on which the transfer notice is given.◀

(2) The liability of the scheme to the beneficiary shall be determined for the purposes of sub-paragraph (1)–

- (a) in accordance with section 73 of the 1995 Act; or
- (b) where that section does not apply, in accordance with the scheme rules.

<sup>2</sup>Words substituted & inserted in para. 2(3) by reg. 7(2)(b) of S.I. 2006/3370 as from 16.12.06.

(3) The annual rate of annuity which ▶<sup>2</sup>has been, can be or could have been◀ purchased for the beneficiary for the purposes of sub-paragraph (1) ▶<sup>3</sup>or, as the case may be, paragraph 2A, as a result of the purchase of an annuity◀ with the assets referred to in that sub-paragraph, shall be determined ▶<sup>2</sup>(or, as the case may be, redetermined)◀–

<sup>3</sup>In Sch. 2, words in sub-paras. (3)(a) & (b), (4) & (5) substituted, sub-para. (3)(c) deleted & sub-paras. (3)(ba) & (3A) & words in sub-paras. (3), (3)(b) & (d) inserted by regs. & 20(a)-(d) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>In Sch. 2 para. 2(3)(a) substituted by reg. 4(6)(b)(ii) of S.I. 2005/3256 as from 24.11.05.

▶<sup>4</sup>(a) where the beneficiary was an active or a deferred member of the qualifying pension scheme ▶<sup>3</sup>on the day before the day on which the qualifying pension scheme began to be wound up◀, on the basis that the sum which will be, or has been, used to discharge the liability of the scheme to him will only be, or has only been, used to purchase an annuity when the qualifying member attains, or attained, his normal retirement age;◀

- (b) where the beneficiary is a survivor ▶<sup>3</sup>or surviving dependant◀ of a member of that scheme, having regard to the annual rate of annuity which will come into payment ▶<sup>3</sup>to that beneficiary on the later of–
  - (i) the day on which an annuity has been purchased from the assets of the scheme; or
  - (ii) the day after the day on which that qualifying member died;◀

▶<sup>3</sup>(ba) where the beneficiary is a survivor or surviving dependant, on the basis that any amount (including any lump sum) payable to that beneficiary as a result of the death of the qualifying member being within a period specified in the scheme rules beginning on the day on which the member became entitled to a pension from the scheme or, if later, the day on which the pension was first paid, shall not be taken into account;◀

(c) ▶<sup>3</sup>◀

(d) on the basis that there has been no commutation of benefits deriving from the scheme ▶<sup>3</sup>after the day on which the scheme began to be wound up◀.

▶<sup>3</sup>(3A) Where the scheme manager is satisfied that the amount of interim pension paid to the beneficiary in respect of any previous year or years in which an annual payment was payable to the beneficiary is higher or lower than the annual rate of annuity determined in accordance with this paragraph, the scheme manager may determine how the actual pension is to be calculated for the purposes of determining the annual payment in respect of each year in which an annual payment is payable to the beneficiary, having regard to–

- (a) the annual rate of annuity determined in accordance with this paragraph;
- (b) the amount of any interim pension which was, or is due to be, paid to the beneficiary; and
- (c) such other matters as the scheme manager considers relevant.◀

▶<sup>1</sup>(3B) Sub-paragraph (3D) applies where the scheme manager is satisfied that the sum of interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (3C) is higher or lower than the sum of–

- (a) the revalued notional pension or survivor notional pension; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d);
  - (ii) the revaluation amount determined in accordance with regulation 17(11); and
  - (iii) the proportion of that year which falls after the 1st January.

(3C) For the purposes of sub-paragraph (3B), the period is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
  - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
- (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

(3D) Where this sub-paragraph applies, the scheme manager may—

- (a) determine how the actual pension is to be calculated, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the day on which the transfer notice is given; and
  - (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (3B)(a) and (b), make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant.

(3E) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before the day on which a transfer notice is given, an amount to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the actual pension is to be calculated, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3F) Where the beneficiary is a qualifying member who has received a payment in accordance with regulation 17H (payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment), or the survivor or surviving dependant of such a qualifying member, the scheme manager may determine how the actual pension is to be calculated, having regard to—

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- (a) the amount paid under regulation 17H;
- (b) any interim pension paid by the scheme from the day on which the scheme began to be wound up until the day on which a transfer notice was given; and
- (c) such other matters as the scheme manager considers relevant.

(3G) Where the beneficiary is a qualifying member to whom regulation 17D applies or a survivor or surviving dependant of such a qualifying member, the scheme manager may determine how the actual pension is to be calculated, having regard to any lump sum paid and determined in accordance with that regulation.

(3H) Where the beneficiary is—

- (a) a qualifying member to whom regulation 17H applied whose payment under Schedule 7 had been reduced under paragraph 1(2) or (5) of that Schedule; or
- (b) a beneficiary who was entitled to an annual payment determined in accordance with Schedule 4 whose payment under that Schedule has been reduced under paragraph 1(2) or (5),

the scheme manager shall include the amount by which the payment has been reduced when determining the actual pension.

(3I) Sub-paragraph (3J) applies where—

- (a) a qualifying member to whom Part 7 applies has received a payment from the scheme before becoming entitled to an annual payment;
- (b) a transfer notice has been given in respect of the qualifying pension scheme; and
- (c) the qualifying member became entitled to an annual payment prior to the day on which the transfer notice was given.

(3J) Where this sub-paragraph applies, the scheme manager may determine how the actual pension is to be calculated, having regard to—

- (a) any interim pension paid by the scheme from the day on which the scheme began to be wound up until the day on which the transfer notice was given; and
- (b) such other matters as the scheme manager considers relevant.

(3K) Where—

- (a) the beneficiary is a qualifying member or the survivor or surviving dependant of a qualifying member to whom part 7 applies;
- (b) the qualifying member has commuted for a lump sum a portion of the benefits deriving from the scheme after the day on which the scheme began to be wound up; and
- (c) a transfer notice has been given in respect of the scheme,

the scheme manager may determine how the actual pension is to be calculated having regard to any lump sum paid as a result of the commutation.◀

(4) Where the scheme manager is satisfied that it is not possible for him to determine the annual rate of annuity for the purposes of sub-paragraph (1) having regard to the information ▶<sup>1</sup>available to it and to such other matters as the scheme manager considers appropriate◀, ▶<sup>2</sup>it◀ shall determine the annual rate of annuity on the basis of the sum which would discharge the liability of the scheme to the beneficiary ▶<sup>1</sup>and of such other matters◀ as ▶<sup>2</sup>it◀ considers relevant.

▶<sup>3</sup>(5) Where the scheme manager is satisfied that increases have been, are being, or will be made to the annual rate of annuity, and ▶<sup>2</sup>it◀ considers that those increases are not reasonable, ▶<sup>2</sup>it◀ may determine the annual rate of annuity on the basis of the sum which would discharge the liability of the scheme to the beneficiary and of such other matters as ▶<sup>2</sup>it◀ considers relevant.◀

<sup>1</sup>In Sch. 2, words in sub- paras. (4) & (5) substituted & sub- paras. (3)(ba) & (3A) & words in sub- paras. (3), (3)(b) & (d) inserted by regs. & 20(a)-(d) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Words substituted in paras. 2(4) & (5) by reg. 7(1)(b) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Sub-para. (5) added by reg. 7(3)(b) of S.I. 2007/3581 as from 19.12.07.

►<sup>1</sup>Annual redetermination

2A.—(1) This paragraph applies where—

- (a) on the first indexation date following the date on which the beneficiary first became entitled to an annual payment; and
- (b) on any indexation date following that first indexation date;

the annual rate of annuity which has been or could have been paid to the beneficiary as at that indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has or had been determined, is higher as a result of indexation or revaluation than the annual rate determined in accordance with paragraph 2.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the indexation date.

(3) When redetermining an annual payment under sub-paragraph (2), the actual pension for the purposes of paragraph 3(2) or 4(2) shall be the annual rate of annuity which has been or could have been paid to the beneficiary as at the indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has or had been determined, on the basis of, and having regard to, the matters referred to in paragraph 2(3).

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of annuity for the purposes of this paragraph, it shall determine that annual rate having regard to such matters as it considers relevant.

(5) Where the scheme manager is satisfied that increases have been, are being, or will be made to the annual rate of annuity, and it considers that those increases are not reasonable, it may determine the annual rate of annuity for the purposes of this paragraph on the basis of the sum which would discharge the liability of the scheme to the beneficiary and of such other matters as it considers relevant.◀

## Qualifying members receiving pensions from the qualifying pension scheme

3.—►<sup>2</sup>(1) This paragraph applies to—

- (a) a member or former member of a qualifying scheme who—
  - (i) is a qualifying member under regulation 15(1), and
  - (ii) was entitled to present payment of a pension under the scheme rules
    - <sup>1</sup>on the day before the day on which the qualifying pension scheme began to be wound up◀; and
- (b) a person who is regarded as a qualifying member under regulation 15(5).

(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

(expected pension x (0.8\*) ►<sup>3</sup>0.9◀) — actual pension.◀

\*Figure of (0.8) remains in force for certain cases, see reg. 8 of S.I. 2008/1432 for when to apply.

►<sup>4</sup>(3) Subject to sub-paragraphs (4) and (5) and paragraphs 4A and 4B, in this paragraph “expected pension” means—

- (a) the annual rate of the pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme as at the day before the day on which the qualifying pension scheme began to be wound up; or
- (b) ►<sup>5</sup>except where paragraph (c) applies,◀ where the day on which the qualifying pension scheme began to be wound up is earlier than 14 May 2004, the aggregate of—

<sup>1</sup>In Sch. 2, para. 2A inserted & words in para. 3(1)(a)(ii) substituted by regs. 21 & 22(a) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Paras. 3(1) & (2) substituted by reg. 7(3)(b) & (4) of S.I. 2007/3581 as from 19.12.07.

<sup>3</sup>Figure substituted in para. 3(2) by reg. 7(2) of S.I. 2008/1432 as from 4.6.08.

<sup>4</sup>Para. 3(3) substituted by reg. 22(b) of S.I. 2009/1851 as from 10.7.09.

<sup>5</sup>Words added in para. 3(3)(b) by reg. 16(c)(i) of S.I. 2010/1149 as from 2.4.10.

## Sch. 2

<sup>1</sup>Para. 3(3)(c) & words in para. 3(3A)(b) & 3(3B)(a) inserted & para. 3(3ZD) added by reg. 16(3)(c)(ii)-(v) of S.I. 2010/1149 as from 2.4.10.

<sup>2</sup>Para. 3(3)(c)(ii) & words in para. 3(3B) substituted, words in para. 3(3A), (3B)(a) & (3C) deleted & para. 3(3AA) inserted by reg. 6(a)-(e) of S.I. 2011/839 as from 31.3.11.

- (i) the annual rate of the pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme as at the day on which the qualifying pension scheme began to be wound up; and
- (ii) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on 14 May 2004 <sup>1</sup>, or
- (c) where the qualifying member attains normal retirement age after 14th May 2004, the aggregate of—
  - (i) the annual rate of pension which was or should have been in payment to the qualifying member in accordance with scheme rules in respect of rights accrued in a qualifying pension scheme as at the day on which the qualifying pension scheme began to be wound up; and
  - <sup>2</sup>(ii) where the qualifying member attains normal retirement age before 31st March 2011, the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the day on which the qualifying member attains normal retirement age; and
  - (iii) where the qualifying member attains normal retirement age on or after 31st March 2011, the sum of—
    - (aa) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the 20th March 2011; and
    - (bb) the revaluation amount for the period beginning on the 31st March 2011 and ending on the day on which the qualifying member attains normal retirement age. ◀

(3A) In sub-paragraph (3)(b)(ii), <sup>2</sup>◀ the revaluation amount is—

- (a) where that period is less than one month, nil; or
- (b) in any other case, the revaluation percentage of the amount of the annual rate of pension under sub-paragraph (3)(b)(i) <sup>2</sup>◀.

<sup>2</sup>(3AA) In sub-paragraph (3)(c)(ii) and (iii), the revaluation amount is—

- (a) where the period—
  - (i) determined in accordance with sub-paragraph (3)(c)(ii), where it applies; or
  - (ii) covered by the periods determined in accordance with paragraphs (aa) and (bb) of sub-paragraphs (3)(c)(iii), where that sub-paragraph applies,
 is less than one month, nil; or
- (b) in any other case, the revaluation percentage of the amount of the annual rate of pension under sub-paragraph (3)(c)(i). ◀

(3B) In <sup>2</sup>sub-paragraphs (3A) and (3AA) ◀, “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices <sup>2</sup>◀ during the revaluation period determined in accordance with sub-paragraph (3)(b)(ii) <sup>2</sup>or (c)(ii) or (iii)◀; and
- (b) the maximum revaluation rate.

(3C) The method for determining the percentage increase in the general level of prices <sup>2</sup>◀ during the revaluation period determined in accordance with sub-paragraph (3)(b)(ii) is—

$$\left(100 \times \left(\frac{A}{B}\right)\right) - 100$$

where—

A is the level of the retail prices index for March 2004; and

B is the level of the retail prices index for the month two months before the month during which the relevant qualifying pension scheme began to be wound up.

►<sup>1</sup>(3ZD) The method for determining the percentage increase in the general level of prices ►<sup>2</sup> during the revaluation ►<sup>2</sup>periods determined in accordance with sub-paragraph (3)(c)(ii) ►<sup>2</sup>and (iii)(aa) is—

$$(100 \times (A \div B)) - 100$$

where—

A is the level of the retail prices index for the month which falls two months before the month ►<sup>2</sup> in which the last day of that revaluation period falls; and

B is the level of the retail prices index for the month which falls two months before the month during which the relevant qualifying pension scheme began to be wound up. ◀

►<sup>2</sup>(3ZDA) The method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraph (3)(c)(iii)(bb) is—

$$(100 \times (A \div B)) - 100$$

where—

A is the general level of prices for the month which falls two months before the month during which the qualifying member attains normal retirement age; and

B is the general level of prices for January 2011. ◀

(3D) In sub-paragraph (3B)(b), “the maximum revaluation rate” in relation to the revaluation period or ►<sup>2</sup>periods is—

- <sup>2</sup>(a) if that period or periods mentioned in sub-paragraph (3)(c) together form a period of 12 months, 5%; or ◀
- (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (3B)(a) had the general level of prices ►<sup>2</sup> increased at the rate of 5% compound per annum during ►<sup>2</sup>those periods. ◀◀

►<sup>3</sup>(4) Where the scheme manager is satisfied that it is not possible for ►<sup>2</sup>it to determine the annual rate of the pension for the purposes of sub-paragraph (3) having regard to all the information available to ►<sup>4</sup>it, ►<sup>4</sup>it shall determine that annual rate, having regard to such matters as ►<sup>2</sup>it considers relevant. ◀

►<sup>4</sup>(5) Where—

- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under sub-paragraph (2) includes an amount which, under the rules of the qualifying pension scheme, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and
- (b) the liabilities of the scheme in respect of the beneficiary have been discharged (whether by the purchase of an annuity or by other means) in a manner which does not provide for a reduction in the annual rate of an annuity from the date on which the amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme,

the scheme manager shall determine the expected pension having regard to the expected pension which would have been determined in accordance with paragraph 4A if that paragraph had applied and to such other matters as it considers relevant. ◀

**Active and deferred members**

4.—(1) This paragraph applies in respect of a qualifying member of a qualifying pension scheme who ►<sup>5</sup> was an active member or a deferred member of that scheme ►<sup>4</sup> on the day before the day on which the qualifying pension scheme began to be wound up. ◀

<sup>1</sup>Para. 3(3ZD) added by reg. 16(3)(c)(v) of S.I. 2010/1149 as from 2.4.10.

<sup>2</sup>Words in para. 3(3ZD) & (3D)(b) substituted, words in para. (3ZD)(b) deleted & paras. 3(3ZDA), (3D)(a) & words in para. 3(ZD) & (3D) inserted by reg. 6(f)-(h) of S.I. 2011/839 as from 31.3.11.

<sup>3</sup>Para. 3(4) inserted by reg. 7(3)(d) of S.I. 2006/3370 as from 16.12.06.

<sup>4</sup>Words in paras. 3(4) & (4) substituted & sub-para. (5) inserted by regs. 7(1)(b), (3)(c), 22(c) & 23(a) of S.I. 2009/1851 as from 10.7.09.

<sup>5</sup>Words deleted in para. 4(1) & substituted in para. 4(1)(3) by reg. 7(4)(a) & (c) of S.I. 2006/3370 as from 16.12.06.

**Sch. 2**

<sup>1</sup>Para. 4(2) substituted by reg. 7(5) of S.I. 2007/3581 as from 19.12.07.

<sup>2</sup>Figure in para. 4(2) substituted by reg. 7(2) of S.I. 2008/1432 as from 4.6.08.

<sup>3</sup>Words substituted in para. 4(1)(3) by reg. 7(4)(a) & (c) of S.I. 2006/3370 as from 16.12.06.

<sup>4</sup>Para. 4(3A) substituted, para. 4(3)(d) inserted & words in para. 4(3) deleted by reg. 23(b)(i)-(iii) of S.I. 2009/1851 as from 10.7.09.

<sup>5</sup>Words inserted in para. 4(3) by reg. 16(d) of S.I. 2010/1149 as from 2.4.10.

<sup>6</sup>Words substituted in para. 4(3)(c) & (d) & para. 4(3)(ca) inserted by reg. 7(b)-(d) of S.I. 2011/839 as from 31.3.11.

►<sup>1</sup>(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

(expected pension x (0.8\*) ►<sup>2</sup>0.9◄) – actual pension.◄

\*Figure of (0.8) remains in force for certain cases, see reg. 8 of S.I. 2008/1432 for when to apply.

(3) In sub-paragraph (2), “expected pension” means, subject to ►<sup>3</sup>sub-paragraphs (3A), ►<sup>4</sup>◄ and (4) ►<sup>5</sup>and paragraphs 4A and 4B;◄◄, the aggregate of—

- (a) the annual rate of the pension to which the qualifying member would have been entitled in accordance with the scheme rules had he attained his normal retirement age when the pensionable service relating to the pension ended;
- (b) the revaluation amount for the first revaluation period (see sub-paragraphs (5) and (6)); ►<sup>4</sup>◄
- (c) the revaluation amount for the second revaluation period (see ►<sup>6</sup>sub-paragraphs (7) to (10) and (11))◄►<sup>4</sup>; and

►<sup>6</sup>(ca) in any case where the day—

- (i) on which the qualifying member attains normal retirement age; or
- (ii) from which the qualifying member becomes entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C,

is on or after 31st March 2011, the revaluation amount for the third revaluation period (see sub-paragraphs (10A) and (11)); and◄

(d) in any case where 14th May 2004 is later than—

- (i) the day on which the qualifying scheme began to be wound up; and
- (ii) the day on which the qualifying member attained normal retirement age,

the relevant amount for the ►<sup>6</sup>fourth◄ revaluation period (see sub-paragraphs (13) to (13D)).◄

►<sup>4</sup>(3A) Where—

- (a) the annual rate of the pension determined for the purposes of sub-paragraph (3)(a) includes an amount which, under the rules of the qualifying pension scheme, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and
- (b) the liabilities of the scheme in respect of the beneficiary have been discharged (whether by the purchase of an annuity or by other means) in a manner which does not provide for a reduction in the annual rate of an annuity from the date on which the amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme,

the scheme manager shall determine the annual rate for the purposes of sub-paragraph (3)(a) having regard to the expected pension which would have been determined in accordance with paragraph 4A if that paragraph had applied and to such other matters as it considers relevant.◄

(3B) ►<sup>7</sup>◄

(4) In any case where the scheme manager is satisfied, having regard to the information available to ►<sup>7</sup>it◄, that it is not possible for ►<sup>7</sup>it◄ to identify any one of the elements in ►<sup>8</sup>sub-paragraph (3) or (3A) or paragraph 4B◄►<sup>7</sup>it◄ may determine how the annual payment is to be calculated having regard to such matters as ►<sup>7</sup>it◄ considers relevant.

►<sup>9</sup>(5) The first revaluation period is the period—

- (a) beginning on the day on which the qualifying member’s pensionable service ended; and
- (b) ending on ►<sup>7</sup>the day before the day on which the qualifying pension scheme began to be wound up ►<sup>10</sup>, (3) or (3C) or 17C◄◄◄.◄

<sup>7</sup>Para. 4(3B), words in para. 4(4) deleted & para. 4(5)(b) inserted by reg. 23(b)(i)-(iii), (d) & (g) of S.I. 2009/1851 as from 10.7.09.

<sup>8</sup>Words substituted in para. 4(4) by regs. 7(4)(a) & (c) of S.I. 2006/3370 as from 16.12.06.

<sup>9</sup>Paras. 4(5) & (7) substituted by reg. 7(4) of S.I. 2008/1432 as from 4.6.08.

<sup>10</sup>Words substituted in para. 4(7)(b)(ii) by reg. 9(2) of S.I. 2009/792 as from 27.3.09.

*Para. 4(5) as it stands without amendment by reg. 7(4)(a) of S.I. 2008/1432 is reproduced below for use where the transitional provision of reg. 8 ibid apply:-*

(5) The first revaluation period is the period beginning on the day on which the qualifying member's pensionable service ended and ending on the day before the day on which the scheme began to wind up.

(6) The revaluation amount for the first revaluation period is the amount by which the annual rate of the pension under sub-paragraph (3)(a) would fall to be revalued—

- (a) in relation to any guaranteed minimum pension, in accordance with section 16 of the 1993 Act, having regard to the relevant scheme rules; and
- (b) in relation to the remainder of the pension, in accordance with Chapter 2 of Part 4 of the 1993 Act <sup>1</sup>or, where scheme rules are more favourable, in accordance with scheme rules <sup>4</sup>.

<sup>2</sup>(7) The second revaluation period is the period—

- (a) beginning on the day after the date determined in accordance with sub-paragraph (5)(b); and
- (b) ending on—
  - <sup>3</sup>(i) the day on which the qualifying member attains normal retirement age; <sup>4</sup>or
  - (ii) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2) <sup>4</sup>, (3) or (3C) or 17C <sup>5</sup>; or
  - (iii) 30th March 2011, <sup>4</sup>whichever is the <sup>5</sup>earliest <sup>4</sup>.

*Para. 4(7) as it stands without amendment by reg. 7(4)(b) of S.I. 2008/1432 is reproduced below for use where the transitional provision of reg. 8 ibid apply:-*

(7) The second revaluation period is the period beginning on the day on which the scheme began to wind up and ending on the certification date.

<sup>5</sup>(7A) The third revaluation period is the period beginning on 31st March 2011 and ending on—

- (a) the day on which the qualifying member attains normal retirement age; or
- (b) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C, whichever is the earlier. <sup>4</sup>

(8) The revaluation amount for the <sup>5</sup>second and third revaluation periods <sup>4</sup> is, subject to sub-paragraph (12)—

- <sup>5</sup>(a) where the period—
  - (i) determined in accordance with sub-paragraph (7) where sub-paragraph (3)(ca) does not apply; or
  - (ii) covered by the second and third revaluation periods where sub-paragraph (3)(ca) applies,

is a period of less than one month, nil; or <sup>4</sup>

- (b) in any other case, the revaluation percentage of the aggregate of the annual rate of the pension under sub-paragraph (3)(a) and the revaluation amount for the first revaluation period under sub-paragraph (6).

(9) In sub-paragraph (8), “the revaluation percentage” means the lesser of

- <sup>5</sup>(a) the percentage increase in the general level of prices during the second revaluation period or, where sub-paragraph (3)(ca) applies, the second and third revaluation periods determined in accordance with sub-paragraphs (7) and (7A) respectively; and <sup>4</sup>
- (b) the maximum revaluation rate.

<sup>1</sup>Words inserted in para. 4(6)(b) by reg. 16(d)(ii) of S.I. 2010/1149 as from 2.4.10.

<sup>2</sup>Paras. 4(7) substituted by reg. 7(4)(b)(b) of S.I. 2008/1432 as from 4.6.08.

<sup>3</sup>Para. 4(7)(b)(i) substituted by reg. 23(g) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Words substituted in para. 4(7)(b)(ii) by reg. 9(2) of S.I. 2009/792 as from 27.3.09.

<sup>5</sup>Word in para. 4(7)(b)(ii) & para. 4(7)(b)(iii) & (7A) inserted & words in para. 4(7)(b) & (8) & para. 4(8)(a) & (9)(a) substituted by reg. 7(e)-(h) of S.I. 2011/839 as from 31.3.11.

## Sch. 2

<sup>1</sup>Words deleted in para. 4(10), (13B)(a) & (13C), words in paras. 4(10), (13) & (13A) & para. 4(11) substituted & para. 4(10A) & words in para. 4(12) inserted by reg. 7(a), (g) & (i)-(n) of S.I. 2011/839 as from 31.3.11.

<sup>2</sup>Para. 4(13) & words in para. 4(10) substituted & para. 4(13A)-(13C), inserted by regs. 23(h) & (i) of S.I. 2009/1851 as from 10.7.09.

(10) The method for determining the percentage increase in the general level of prices ►<sup>1</sup>◄ during the second revaluation period is—

$$(100 \times \frac{A}{B} - 100)$$

where—

A is the level of the retail prices index for the month which falls two months before the month in which ►<sup>2</sup>the ►<sup>1</sup>last day of the revaluation period◄◄ falls;

B is the level of the retail prices index for the month two months before the month during which the relevant qualifying pension scheme began to wind up.

►<sup>1</sup>(10A) The method for determining the percentage increase in the general level of prices during the third revaluation period is—

$$(100 \times (A \div B)) - 100$$

where—

(a) A is the general level of prices for the month which falls two months before the month in which the day on which the qualifying member is entitled to an annual payment falls; and

(b) B is the general level of prices for January 2011.◄

►<sup>1</sup>(11) In sub-paragraph (9)(b), “the maximum revaluation rate” in relation to the second and third revaluation periods is—

(a) 5% if either—

(i) sub-paragraph (3)(ca) does not apply and the period referred to in sub-paragraph (c) is a period of 12 months; or

(ii) sub-paragraph (3)(ca) applies and the periods referred to in sub-paragraph (3)(c) and (ca) together form a period of 12 months; or

(b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (9)(a) had the general level of prices whether determined in accordance with sub-paragraph (10) or (10A), increased at the rate of 5% compound per annum during those periods.◄

(12) In determining the revaluation amount for the second ►<sup>1</sup>or third◄ revaluation period in accordance with sub-paragraphs (8) to (11), no revaluation shall be made in respect of any benefits which are not subject to revaluation under the scheme rules.

►<sup>1</sup>(13) The ►<sup>1</sup>fourth◄ revaluation period is the period—

(a) beginning on the day after the day on which the member attained normal retirement age; and

(b) ending on 14 May 2004.

(13A) The revaluation amount for the ►<sup>1</sup>fourth◄ revaluation period is—

(a) where that period is less than one month, nil; or

(b) in any other case, the revaluation percentage of the aggregate of—

(i) the annual rate of the pension under sub-paragraph (3)(a);

(ii) the revaluation amount for the first revaluation period under sub-paragraph (6); and

(iii) the revaluation amount for the second revaluation period under sub-paragraph (8).

(13B) In sub-paragraph (13A), “the revaluation percentage” means the lesser of—

(a) the percentage increase in the general level of prices ►<sup>1</sup>◄ during the revaluation period determined in accordance with sub-paragraph (13); and

(b) the maximum revaluation rate.

(13C) The method for determining the percentage increase in the general level of prices ►<sup>1</sup>◄ during the revaluation period determined in accordance with sub-paragraph (13) is—

$$(100 \times (A - B)) - 100$$

where—

A is the level of the retail prices index for March 2004; and

B is the level of the retail prices index for the month two months before the month in which the qualifying member attained normal retirement age.

(13D) In sub-paragraph (13B)(b), “the maximum revaluation rate” in relation to the revaluation period is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (13B)(a) had the general level of prices <sup>1</sup> increased at the rate of 5% compound per annum during that period. <sup>2</sup>

<sup>1</sup>Words deleted in para. 4(13D)(b) by reg. 7(a) of S.I. 2011/839 as from 31.3.11.

<sup>2</sup>Paras. 4A & 4B inserted by reg. 24 of S.I. 2009/1851 as from 10.7.09.

### ►<sup>2</sup>Bridging pensions

**4A.**—(1) This paragraph applies where—

- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under paragraph 3(2) or 4(2) includes an amount which, under the scheme rules, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and

►<sup>3</sup>(b) either—

- (i) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the scheme rules; or
- (ii) a notional pension has been determined in respect of the beneficiary which includes an amount in respect of an amount which under scheme rules would be payable for a period which is shorter than the period in respect of which the remainder of the pension would be payable. <sup>4</sup>

<sup>3</sup>Para. 4A(1)(b) substituted & words inserted in para. 4A(3)(a) by reg. 16(c)(i) & (e)(ii) of S.I. 2010/1149 as from 2.4.10.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme.

(3) When redetermining an annual payment under sub-paragraph (2)—

- (a) the annual rate of the pension for the purposes of paragraph 3(3)(a) <sup>5</sup> and (c) <sup>6</sup> shall be the annual rate of pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day which is the day before the day on which the qualifying pension scheme began to be wound up;
- (b) the annual rate of the pension for the purposes of paragraph 3(3)(b)(i) shall be the amount which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day on which the qualifying member attained normal retirement age;
- (c) the amount specified in paragraph 4(3)(a) shall be the amount determined in accordance with that paragraph less the amount which is the amount which was payable for the shorter period referred to in sub-paragraph (1)(a);
- (d) the amount which was payable for the shorter period referred to in sub-paragraph (1)(a) shall be disregarded when determining the revaluation amounts; and
- (e) the beneficiary shall be entitled to so much of the total amount of the annual increases determined in accordance with paragraph 9 payable to the beneficiary as at the date referred to in sub-paragraph (2) as are attributable to the amount of expected pension determined in accordance with this paragraph.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of pension for the purposes of sub-paragraph (3)(a) or (b) or any one of the amounts for the purposes of sub-paragraph (3)(c) to (e) it shall determine that annual rate or amount, having regard to such matters as it considers relevant.

(5) In sub-paragraph (3)(d) “the revaluation amounts” means—

- (a) the revaluation amount referred to in paragraph 3(3)(b)(ii) <sup>1</sup>and (c)(ii) and (iii) <sup>2</sup>; and
- (b) the revaluation amounts referred to in paragraph 4(3)(b) to (d).

<sup>1</sup>Words inserted in para. 4A(5)(a) by reg. 8 of 2011/839 as from 31.3.11.

#### **Pension payable at an age other than normal retirement age**

**4B.**—(1) This paragraph applies where any pension or part of a pension would have been payable to the qualifying member for life without actuarial adjustment under the rules of the qualifying pension scheme (disregarding any rule making special provision as to early payment on the grounds of ill health or otherwise) at an age other than the member’s normal retirement age.

(2) Where this paragraph applies—

- (a) paragraphs 3(3) and 4(3) and (3A) shall have effect as if the amount of pension or part of a pension payable at the age other than the member’s normal retirement age were a separate pension;
- (b) paragraph 4(3)(a) shall have effect as if the reference to normal retirement age were a reference to the age at which the pension or part of a pension would be payable to the qualifying member without actuarial reduction under the rules of the qualifying pension scheme (disregarding any rule making special provision as to early payment on the grounds of ill health or otherwise); and
- (c) “expected pension” in paragraphs 3(2) and 4(2) means, subject to paragraph 4(4), the aggregate of the amounts calculated as the expected pension in accordance with paragraphs 3 and 4 in relation to any pension treated as a separate pension in accordance with paragraph (a).

(3) An actuarial factor, determined having regard to such matters as the person determining the factor considers relevant, shall be applied to any amount determined in accordance with sub-paragraph (2)(a). <sup>3</sup>

#### **Survivors of qualifying members**

**5.**—<sup>2</sup>(1) This paragraph applies where—

- (a) immediately before a qualifying pension scheme began to wind up, a qualifying member—
  - (i) was entitled to present payment of a pension under the scheme rules and that pension was attributable—
    - (aa) to the member’s pensionable service; or
    - (bb) (directly or indirectly) to a pension credit to which the member became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999(a) (creation of pension debits and credits); or
  - (ii) was an active member or a deferred member of that scheme;
- (b) that member dies on or after the day on which the scheme began to wind up; and
- (c) that member—
  - (i) was entitled to an annual payment <sup>3</sup>, or
  - (ii) would have been entitled to such an annual payment had he not died before he became so entitled. <sup>4</sup>

<sup>2</sup>Para. 5(1) substituted by reg. 7(5) of S.I. 2006/3370 as from 16.12.06.

<sup>3</sup>Words deleted in para. 5(1)(c)(i) by reg. 16(f)(i) of S.I. 2010/1149 as from 2.4.10.

(a) 1999 c. 30.

(2) The annual payment payable to the survivor of a qualifying member to whom this paragraph applies shall be determined in accordance with <sup>1</sup>sub-paragraph (3) or (6A).◀

<sup>1</sup>(3) Except where sub-paragraph (6A) applies, the annual payment payable to a survivor shall be—

$$\frac{\text{▶}^2\text{expected pension} \times 0.9}{2} + H - A \text{◀} \text{◀}$$

(4) In sub-paragraph (3), “expected pension” shall, subject to sub-paragraph (5), be determined—

- (a) where the qualifying member was entitled to present payment of a pension under the scheme rules <sup>3</sup>▶on the day before the day on which the qualifying pension scheme began to be wound up◀, in accordance with paragraph 3(3);
- (b) where the qualifying member was an active member or a deferred member of a qualifying pension scheme, in accordance with <sup>3</sup>▶sub-paragraph (7)◀.

*Para. 5(4)(b), as it stands without amendment by reg. 7(5) of S.I. 2008/1432 is reproduced below for use where the transitional provisions of reg. 8 ibid apply:-*

(b) where the qualifying member was an active member or a deferred member of a qualifying pension scheme <sup>4</sup>▶on the crystallisation date◀, in accordance with paragraph 4(3).

(5) In any case where the scheme manager is satisfied that it is not possible for <sup>3</sup>▶it◀ to identify either or both elements of the formula in sub-paragraph (3), <sup>3</sup>▶it◀ may determine how the annual payment is to be calculated having regard to the scheme rules and such other matters as <sup>3</sup>▶it◀ considers relevant.

(6) <sup>3</sup>▶◀

<sup>3</sup>▶(6A) Where the qualifying member was a party to a polygamous marriage, the annual payment payable to each survivor shall be—

$$\frac{(E + H) - B}{N}$$

(6B) In this paragraph—

“A” means the actual pension;

“B” means the sum of the actual pensions of all the survivors of that qualifying member;

“E” means one half of the product of 0.9 multiplied by the expected pension which would be determined in accordance with sub-paragraph (3) if sub-paragraph (6A) did not apply;

<sup>4</sup>▶“H” means the aggregate of—

- (a) one half of the amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died; and
- (b) where sub-paragraph (6C) applies, the total amount of annual increases determined in accordance with paragraph 9 to which any survivor was entitled on the day on which the survivor died;◀

“N” means the number of survivors of that qualifying member.

(6C) Where a survivor of a qualifying member who was a party to a polygamous marriage dies, the annual payment payable to each survivor of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died.◀

<sup>5</sup>▶(7) For the purposes of sub-paragraph (4)(b), “expected pension” means the aggregate amount of—

- (a) the amount specified in paragraph 4(3)(a);
- (b) the revaluation amount for the first survivor revaluation period (see sub-paragraphs (8) and (9)); <sup>3</sup>▶◀

<sup>1</sup>Words in para. 5(2) & para. 5(3) substituted by regs. 7(1)(b) & 25(a) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>The formula in para. 5(3) substituted by reg. 16(f)(ii) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Words in para. 5(4) & (5) substituted, para. 5(6) & words in sub-para. (7)(b) deleted & para. 5(6A) inserted by regs. 7(1)(b), (4)(c) & 25(a)-(f) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Defn. of “H” substituted in para. 5(6B) by reg. 16(f)(iii) of S.I. 2010/1149 as from 2.4.10.

<sup>5</sup>Para. 5(7)-(11) inserted by reg. 7(5)(c) of S.I. 2008/1432 as from 4.6.08 for certain cases, see reg. 8 ibid.

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<sup>1</sup>Word deleted in para. 5(7)(c), para. 5(7)(ca) & (10A) & word in para. 5(7)(d) inserted & words in para. 5(7)(d) & para. 5(10)(b)(i) substituted by reg. 9(a)-(c) of S.I. 2011/839 as from 31.3.11.

<sup>2</sup>Para. 5(7)(d) substituted by reg. 16(f)(iv) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Words in para. 5(8)(b)(ii) & para. 5(10)(b) substituted & para. 5A inserted by regs. 9(2) of S.I. 2009/792 as from 27.3.09.

- (c) the revaluation amount for the second survivor revaluation period (see sub-paragraphs (10) and (11)). ►<sup>1</sup>◄
- <sup>1</sup>(ca) in any case where—
- (i) the day from which the qualifying member became entitled to an annual payment; or
- (ii) the day from which the survivor of the qualifying member became entitled to an annual payment,
- is on or after 31st March 2011, the revaluation amount for the third survivor revaluation period (see sub-paragraphs (10A) and (11)); and◄
- <sup>2</sup>(d) in any case where—
- (i) 14th May 2004 is later than—
- (aa) the day on which the qualifying member died; and
- (bb) the day on which the qualifying pension scheme began to be wound up; or
- (ii) the qualifying member attained normal retirement age before 14th May 2004 but died on or after 14th May 2004,
- the revaluation amount for the ►<sup>1</sup>fourth◄ survivor ►<sup>1</sup>revaluation◄ period (see sub-paragraphs (12) and (13)).◄
- (8) The first survivor revaluation period is the period—
- (a) beginning on the day on which the qualifying member's pensionable service ended; and
- (b) ending on—
- (i) the day before the day on which the scheme began to wind up;
- (ii) the day from which the qualifying member became entitled to an annual payment in accordance with regulation 17(2) ►<sup>3</sup>, (3) or (3C) or 17C◄; or
- (iii) the day from which the survivor of the qualifying member became entitled to an annual payment under regulation 17(4),
- whichever is the earliest.
- (9) The revaluation amount for the first survivor revaluation period is the revaluation amount determined in accordance with paragraph 4(6).
- (10) The second survivor revaluation period is the period—
- (a) beginning on the day after the date determined in accordance with sub-paragraph (8)(b); and
- <sup>3</sup>(b) ending on—
- <sup>1</sup>(i) the earliest of—
- (aa) the day from which the qualifying member became entitled to an annual payment;
- (bb) the day from which the survivor of the qualifying member became entitled to an annual payment; or
- (cc) 31st March 2011; or◄
- (ii) in any case where 14 May 2004 is later than—
- (aa) the day on which the qualifying member died; and
- (bb) the day on which the qualifying pension scheme began to be wound up,
- the day on which the qualifying member died.◄
- <sup>1</sup>(10A) The third survivor revaluation period is the period beginning on 31st March 2011 and ending on the earlier of—
- (a) the day from which the qualifying member became entitled to an annual payment; and
- (b) the day from which the survivor of the qualifying member became entitled to an annual payment.◄

▶<sup>1</sup>(11) The revaluation amounts for the second survivor and third survivor revaluation periods are the revaluation amounts determined in accordance with paragraph 4(8) to (12).◀

<sup>3</sup>Para. 5(11) & words in para. 5(12) & (13) substituted by reg. 9(d)-(f) of S.I. 2011/839 as from 31.3.11.

▶<sup>2</sup>(12) The ▶<sup>1</sup>fourth◀ survivor revaluation period is the period—

<sup>2</sup>Paras. 5(12) & (13) inserted by regs. 25(h) & 26 of S.I. 2009/1851 as from 10.7.09.

(a) beginning on ▶<sup>3</sup>the day after the day determined in accordance with sub-paragraph (10)(b)◀; and

(b) ending on 14 May 2004.

<sup>3</sup>Words substituted in para. 5(12)(a) by reg. 16(f)(v) of S.I. 2010/1149 as from 2.4.10.

(13) The revaluation amount for the ▶<sup>1</sup>fourth◀ survivor revaluation period is the revaluation amount determined in accordance with paragraph 4(13A) to (13D).◀

▶<sup>4</sup>Payment for an entitlement under regulation 17C

<sup>4</sup>Words in para. 5(8)(b)(ii) & para. 5(10)(b) substituted & para. 5A inserted by regs. 9(2) & (3) of S.I. 2009/792 as from 27.3.09.

**5A.**—(1) This paragraph applies where a qualifying member is entitled to an annual payment in accordance with regulation 17C for a period during which that member has previously received a relevant payment.

(2) The annual payment payable to a qualifying member to whom this paragraph applies is determined in accordance with this Schedule.

(3) For any period for which an annual payment under regulation 17C is due to be paid and a relevant payment has previously been paid, the relevant payment is treated as a payment on account of the annual payment under regulation 17C.

(4) Where the amount of the relevant payment so treated equals the amount of the annual payment payable under sub-paragraph (2), no further payment under regulation 17C is due to the qualifying member.

(5) In this paragraph, “relevant payment” means a payment in accordance with these Regulations other than a payment for a survivor by virtue of regulation 17(4), 17A(3), 17B(2)(b) or 18(4).◀

▶<sup>5</sup>Surviving dependants of qualifying members

<sup>5</sup>Para. 5B substituted by reg. 16(g) of S.I. 2010/1149 as from 2.4.10.

**5B.**—(1) The annual payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an annual payment is also payable to a survivor of the qualifying member and—

(a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{0.5 \times Q}{2} + D - B;$$

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{(0.5 \times Q) + D - B}{N}$$

(3) Where the qualifying member does not have a survivor and—

(a) there is only one surviving dependant, the amount of annual payment shall be—

$$\frac{Q}{2} + D + S - B;$$

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{Q + S + D - B}{N}$$

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## (4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor by virtue of regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009(a), dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes entitled to an annual payment as a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

## (5) In this paragraph—

“B” means—

- (a) where there is only one surviving dependant, the surviving dependant’s actual pension; or
- (b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of that qualifying member;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where sub-paragraph (4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3)(a), nil; and

- (c) in all other cases, nil;

“N” means the number of surviving dependants of the qualifying member;

“Q” means the sum of—

- (a) the product of 0.9 multiplied by the expected pension which has been or could have been determined in accordance with paragraph 5(4); and
- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died;

“S” means—

- (a) where sub-paragraph (4)(a) applies and, as a result the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3), the total amount of annual increases to which the survivor was entitled on the day on which the survivor died; and
- (b) in all other cases, nil.◀

**Exclusion of certain benefits**

6.—(1) No account shall be taken of the benefits specified in sub-paragraph (2) when determining, for the purposes of this Schedule—

- (a) the assets available to be used to discharge a liability of a qualifying pension scheme;
- (b) the liabilities of such a scheme; and
- (c) the annual rate of pension from such a scheme.

## (2) The specified benefits are—

- (a) money purchase benefits; ▶<sup>1</sup>and◀
- (b) benefits derived from the payment of voluntary contributions where, on the winding up of the scheme, the assets of the scheme have first been applied to satisfy liabilities in respect of those benefits;

- (c) ▶<sup>1</sup>◀

(3) ▶<sup>1</sup>◀

<sup>1</sup>In para. 6(2)(a) word inserted & sub-para. (2)(c) & (3) omitted by reg. 7(6) of S.I. 2006/3370 as from 16.12.06.

(a) S.I. 2009/1851.

**Cap on expected pension and actual pension**

7.—<sup>1</sup>(1) Where the amount of a qualifying member's expected pension determined in accordance with the previous provisions of this Schedule multiplied by 0.9 exceeds the FAS cap—

- (a) the amount of the annual payment payable to, or in respect of, the member under paragraphs 3 to 5B shall be determined on the basis that the product of that calculation was the amount of the FAS cap; and
- (b) the expected pension for the purposes of paragraph (b)(i) in the definition of "underlying rate" in paragraph 9 shall be the amount of the FAS cap;◀

(2) Where the amount of a qualifying member's actual pension determined in accordance with paragraph 2 exceeds—

- (a) the amount of a qualifying member's expected pension determined in accordance with the previous provisions of this Schedule multiplied by (0.8\*) ▶<sup>2</sup>0.9◀▶<sup>3</sup>◀; or
- (b) ▶<sup>2</sup>the FAS cap◀,

*\*Figure of (0.8) remains in force for certain cases, see reg. 8 of S.I. 2008/1432 for when to apply.*

no annual payment shall be payable to, or in respect of, that member.

▶<sup>4</sup>(3) Except where sub-paragraph (5) applies, in this paragraph "the FAS cap" is—

- (a) where the beneficiary became entitled to an annual payment before 1st April 2007, £26,000;
- (b) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2007, and ending on 31st March 2008, £26,936;
- (c) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2008 and ending on 31st March 2009, £27,987;
- (d) where the beneficiary became entitled, or becomes entitled, to an annual payment in the period beginning on 1st April 2009 and ending on 31st March 2010, £29,386; ▶<sup>5</sup>◀
- ▶<sup>5</sup>(e) where the beneficiary becomes entitled to an annual payment in the period beginning on 1st April 2010 and ending on 31st March 2011, £29.386; and
- (f) where the beneficiary becomes entitled to an annual payment after 31st March 2011, the amount determined in accordance with sub-paragraph (4).◀

(4) For each successive period of 12 months from ▶<sup>5</sup>1st April 2011◀, the FAS cap shall be—

- (a) where paragraph (b) does not apply, the amount of the FAS cap for the previous period of 12 months increased by the percentage increase ▶<sup>5</sup>in the general level of prices◀ for the period of 12 months ending on the 30th September falling within that previous period of 12 months; or
- (b) where there is no such percentage increase, the amount of the FAS cap for the previous period of 12 months.

(5) Where a qualifying member dies on or after the day on which that qualifying member became entitled to an annual payment, "the FAS cap" for the purposes of determining the amount of the annual payment payable to a survivor or a surviving dependant of that qualifying member under paragraph 5 or 5B is the amount which was determined in accordance with sub-paragraph (3) for the purposes of determining the amount of the annual payment payable to that qualifying member.

(6) Where the amount of the FAS cap determined in accordance with sub-paragraph (3)(e) results in a fraction of a pound, that fraction shall be treated as a pound.◀

8. ▶<sup>6</sup>◀

**▶<sup>4</sup>Annual increase to an annual payment**

9.—(1) Except where there is no percentage increase in the ▶<sup>7</sup>general level of prices◀ for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an annual amount determined in accordance with paragraphs 2A to 5B shall be entitled, on the indexation date, to an increase of—

<sup>1</sup>Para. 7(1) & words in para. 7(2)(b) substituted by reg. 27(a)-(c) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Figure substituted in para. 7(2) by reg. 7(2) & (5) of S.I. 2008/1432 as from 4.6.08 for certain cases, see reg. 8 *ibid.*

<sup>3</sup>Words omitted in para. 7(2)(a) by reg. 7(7)(b) of S.I. 2007/3581 as from 19.12.07.

<sup>4</sup>Para. 7(3)-(6) inserted & para. 9 substituted by regs. 27(c) & 28 of S.I. 2009/1851 as from 10.7.09.

<sup>5</sup>Word deleted in para. 7(3)(d) & para. 7(3)(e) & words in para. 7(4) & (4)(a) substituted & para. 7(3)(f) inserted by reg. 10(a) & (b) of S.I. 2011/839 as from 31.3.11.

<sup>6</sup>Para. 8 deleted by reg. 7(8) of S.I. 2007/3581 as from 19.12.07.

<sup>7</sup>Words substituted in para. 9(1) by reg. 11 of S.I. 2011/839 as from 31.12.11.

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- (a) the appropriate percentage of the amount of the underlying rate immediately before that date, or
- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

## (2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the <sup>1</sup>general level of prices<sup>2</sup> for the period of 12 months ending with the 31st May last falling before the indexation date; and
- (b) 2.5%;

“underlying rate” means—

- (a) the aggregate of—
  - (i) the product of X multiplied by so much of the expected pension as is attributable to post-1997 service;
  - (ii) where—
    - (aa) the beneficiary is a survivor or a surviving dependant of a qualifying member; and
    - (bb) that qualifying member dies on or after the day on which that qualifying member became entitled to an annual payment, the product of X multiplied by W; and
  - (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; or
- (b) where paragraph 7(1) applies, the aggregate of—
  - (i) so much of the expected pension as is, proportionately, attributable to post-1997 service; and
  - (ii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;

“post-1997 service” means—

- (a) pensionable service (whether actual or notional) which occurs on or after 6th April 1997; or
- (b) where the annual payment is payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“W” means the amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on <sup>2</sup>the day on which the qualifying member died;

“X” means—

- (a) 0.9, where the beneficiary is the qualifying member;
- (b) 0.45, where the beneficiary is a survivor who is not a survivor to whom paragraph 5(6A) applies;
- (c) the product of 0.45 divided by Y, where the beneficiary is a survivor to whom paragraph 5(6A) applies;
- (d) the product of 0.9 divided by Z, where the beneficiary is a surviving dependant and the qualifying member does not have a survivor; or
- (e) the product of 0.45 divided by Z, where the beneficiary is a surviving dependant and an annual payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

<sup>1</sup>Words in para. 9(2) substituted by reg. 11 of S.I. 2011/839 as from 31.12.11.

<sup>2</sup>Words omitted in defn. of “W” in para. 9(2) by reg. 16(h) & (i) of S.I. 2010/1149 as from 2.4.10.

(3) In any case where the scheme manager is satisfied, having regard to the information available, that it is not possible for the scheme manager to determine the amount of expected pension which is attributable to post-1997 service for the purposes of this paragraph, the scheme manager shall determine that amount, having regard to such matters as the scheme manager considers relevant.◀

**Initial payments**

10. The preceding provisions of this Schedule shall apply for the purposes of determining the amount of an initial payment with the following modifications–

▶<sup>1</sup>(a) for paragraph 2, substitute–

**“Interim pension**

2.—(1) In this Schedule, “interim pension” means, subject to sub-paragraphs (2) and (3), the annual rate of pension that was in payment, is in payment, or is proposed to be paid, to a qualifying member, or to a survivor ▶<sup>2</sup>or surviving dependant◀ of that qualifying member, from the assets of the qualifying pension scheme of which that qualifying member is, or was, a member–

- (a) on or after the time when the scheme began to wind up; but
- (b) before the day on which the scheme’s liabilities to or in respect of the qualifying member are, or were, discharged.

(2) Where–

- (a) the annual rate of pension referred to in sub-paragraph (1)–
  - (i) was or is in payment, and
  - (ii) was determined following commutation ▶<sup>3</sup>, after the day on which the qualifying pension scheme began to be wound up,◀ of some of the benefits deriving from the scheme to which that qualifying member is entitled,
 that annual rate shall be redetermined on the basis that there was ▶<sup>4</sup>no such commutation◀; and
- (b) the annual rate of pension referred to in sub-paragraph (1) is proposed to be paid, that annual rate shall be determined on the basis that there has been no commutation of benefits ▶<sup>3</sup>after the day on which the scheme began to be wound up.◀

(3) Where the scheme manager is satisfied that it is not possible for ▶<sup>3</sup>it◀ to determine the annual rate of pension for the purposes of sub-paragraph (1) having regard to the information available to ▶<sup>3</sup>it◀, ▶<sup>3</sup>it◀ shall determine the annual rate of pension on the basis of that portion of the assets of the qualifying pension scheme (of which the qualifying member is, or was, a member) provisionally allocated to the member by the trustees or managers, or survivor ▶<sup>3</sup>or surviving dependant◀ of that member–

- (a) on or after the time when the scheme began to wind up; but
- (b) before the day on which the scheme’s liabilities in respect of the qualifying member are, or were, discharged,

and such other matters as the scheme manager considers relevant.”.◀

(b) for “actual pension”, in each place, substitute “interim pension”;

▶<sup>5</sup>(ba) for ▶<sup>6</sup>regulation 17(2), (3) or (3C) or 17C◀ in each place, substitute “regulation 18(4)”;

(c)–(ca) ▶<sup>4</sup>◀

▶<sup>7</sup>(d) for “annual payment”, in each place that it occurs (except in paragraph 1(1)), substitute “initial payment”; and

(e) in paragraph 5–

(i) for sub-paragraph (3) substitute–

“(3) The initial payment payable to a survivor of a qualifying member shall be–

$\frac{(\text{expected pension} \times 0.6)}{2}$  — interim pension payable to that survivor.”◀

<sup>1</sup>Words in para. 10(a) substituted by reg. 7(9) of S.I. 2006/3370 as from 16.12.06.

<sup>2</sup>Words inserted & substituted in para. 10(a) of Sch. 2 by reg. 29(a)(i) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Words inserted & substituted in para. 10(a) of Sch. 2 by regs. 7(1)(b), (4)(c) & 29(a)(i)-(iii) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Words in para. 10(2)(a) inserted, in para. 10(2)(e) substituted & para. 10(c) & (ca) omitted by reg. 7(9)(a) & (c)-(d) of S.I. 2007/3581 as from 19.12.07.

<sup>5</sup>Para. 10(ba) substituted by reg. 14 of S.I. 2008/1903 as from 17.7.08.

<sup>6</sup>Words substituted in para. 10(ba) by reg. 9(5) of S.I. 2009/792 as from 27.3.09.

<sup>7</sup>Para. 10(d) & (e) added by reg. 4(6)(e)(ii) of S.I. 2005/3256 as from 24.11.05.

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<sup>1</sup>Sch. 2, para. 10(e)(ii) substituted by reg. 29(b) of S.I. 2009/1851 as from 10.7.09.

►<sup>1</sup>(ii) for sub-paragraph (4) substitute—

“(4) In sub-paragraph (3), “expected pension” shall, subject to sub-paragraph (5), be the sum of—

(a) the amount determined—

(i) where the qualifying member was entitled to a present payment of a pension under the scheme rules on the day before the day on which the qualifying pension scheme began to be wound up, in accordance with paragraph 3(3); or

(ii) where the qualifying member was an active member or a deferred member of a qualifying pension scheme on the day before the day on which the qualifying pension scheme began to be wound up, in accordance with ►<sup>2</sup>sub-paragraph (7)◄; and

(b) the product of the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on ►<sup>2</sup>◄ the day on which the qualifying member died divided by 0.9”.◄

<sup>2</sup>In Sch. 2, words substituted & omitted in para. 10(e)(ii) by reg. 16(i) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>In Sch. 2, para. 10A inserted by reg. 30 of S.I. 2009/1851 as from 10.7.09.

**►<sup>3</sup>Shared initial payments**

**10A.**—(1) Where two or more survivors of a qualifying member are entitled to a shared initial payment by virtue of regulation 18(4B), the amount of each survivor’s shared initial payment shall be—

$$\frac{Z - Y}{N}$$

(2) In this paragraph—

“N” means the number of survivors of the qualifying member;

“Y” means the sum of the interim pensions of all the survivors which would have been determined in accordance with paragraph 5(3)(a) had that paragraph applied to the survivors; and

“Z” means the product of 0.9 multiplied by the expected pension which would have been determined in accordance with paragraph 5(3) had that paragraph applied to the survivors.◄

**Rounding**

**11.** Where the amount of an annual payment or an initial payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

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(a) Paragraph 5(3) is modified by paragraph 10(b), (d), & (e) of Schedule 2 for the purposes of determining the amount of an initial payment.

►<sup>1</sup>SCHEDULE 2A Regulations 17A(8) and 17B(6)

<sup>1</sup>Sch. 2A inserted by reg. 15 of S.I. 2008/1903 as from 17.7.08.

DETERMINATION OF ILL HEALTH AND INTERIM ILL HEALTH PAYMENTS

**Introductory**

1. This Schedule applies for the purposes of determining the amount of an ill health payment or an interim ill health payment payable to or in respect of qualifying members of qualifying pension schemes who are unable to work due to ill health and are likely to continue to be so unable to work until normal retirement age.

**Amount of an ill health payment**

2.—(1) The amount of an ill health payment payable to a qualifying member of a qualifying pension scheme shall be—

$$C((A \times 0.9) - B);$$

►<sup>2</sup>(2) Except where sub-paragraph (2A) applies, the amount of an ill health payment to a survivor of a qualifying member of a qualifying person scheme shall be—

$$\frac{\text{►}^3Q + S - B}{2}; \blacktriangleleft$$

<sup>2</sup>Sch. 2A, para. 2(2) substituted by reg. 31(a)(i) of S.I. 2009/1851 as from 10.7.09.  
<sup>3</sup>Formulas substituted in para. 2(2) & (2A), and defns. of “D”, “E” & “H” deleted & defns. of “Q” & “S” added in para. (3) by reg. 17 of S.I. 2010/1149 as from 2.4.10.

(2A) Where a qualifying member was a party to a polygamous marriage, the amount of an ill health payment payable to each survivor shall be—

$$\frac{\text{►}^3(0.5 \times Q) + S - B}{N}; \blacktriangleleft$$

(2B) Where a survivor of a qualifying member who was a party to a polygamous marriage dies, the ill health payment payable to each survivor of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died. ◀

(3) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

- (a) the beneficiary were entitled to an annual payment; and
- (b) the modifications in paragraph 6 applied;

“B” means the amount of actual pension which would be determined in accordance with Schedule 2 if—

- (a) the beneficiary were entitled to an annual payment; and
- (b) the modifications in paragraph 6 applied; ►<sup>4</sup>◀

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied.

►<sup>3</sup>◀  
►<sup>3</sup>◀

“N” means the number of survivors of that qualifying member. ◀

►<sup>3</sup>“Q” means the sum of—

- (a) the product of C multiplied by A multiplied by 0.9; and
- (b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died;

“S” means—

- (a) where sub-paragraph (2B) applies, the total amount of any annual increases to which any survivor was entitled on the day on which the survivor died; and

<sup>4</sup>In para. 2(3) word deleted in defn. of “B” by reg. 31(a)(ii) of S.I. 2009/1851 as from 10.7.09.

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<sup>1</sup>Words substituted in sub-para. (4) in Sch. 2A by reg. 31(a)(iii) & (b) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Sch. 2A(2A) inserted by reg. 31(b) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Para. 2A substituted by reg. 17(b) of S.I. 2010/1149 as from 2.4.10.

(b) in all other cases, nil.◀

(4) This paragraph is subject to ▶<sup>1</sup>paragraph 7.◀

**▶<sup>2</sup>Amount of an ill health payment to a surviving dependant**

▶<sup>3</sup>2A.—(1) The amount of an ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an ill health payment is also payable to a survivor of the qualifying member and—

(a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{0.5 \times Q}{2} + D - B;$$

(b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(0.5 \times Q) + D - B}{N}$$

(3) Where the qualifying member does not have a survivor and—

(a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$(0.5 \times Q) + D + S - B;$$

(b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{Q + S + D - B}{N}$$

(4) Where—

(a) a survivor of a qualifying member, who is not a person who is treated as a survivor by virtue of regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies;

(b) a person ceases to be a surviving dependant of a qualifying member; or

(c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member,

the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraph (a) to (c) occurred.

(5) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

(a) the qualifying member were entitled to an annual payment; and

(b) the modifications in paragraph 6 applied;

“B” means—

(a) where there is only one surviving dependant, the actual pension of that surviving dependant which would be determined in accordance with Schedule 2 if—

(i) the surviving dependant were entitled to an annual payment; and

(ii) the modifications in paragraph 6 applied;

(b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of the qualifying member which would be determined in accordance with Schedule 2 if—

- (i) the surviving dependants were entitled to annual payments; and
- (ii) the modifications in paragraph 6 applied;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“D” means—

(a) subject to paragraph (b), where sub-paragraph (4) applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;

(b) where sub-paragraph (4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under sub-paragraph (3)(a), nil; and

(c) in all other cases, nil;

“N” means the number of surviving dependants of that qualifying member;

“Q” means the sum of—

(a) the product of C multiplied by A multiplied by 0.9; and

(b) the total amount of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day on which the qualifying member died; and

“S” means—

(a) where sub-paragraph (4)(a) applies and, as a result the annual payment payable to a surviving dependant is determined under sub-paragraph (3), the total amount of annual increases to which the survivor was entitled on the day on which the survivor died; and

(b) in all other cases, nil.◀

**Amount of an interim ill health payment**

3.—(1) The amount of an interim health payment payable to a survivor of a qualifying member of a qualifying pension scheme shall be—

$$C((A \times 0.9) - D)$$

(2) ▶<sup>1</sup>Except where sub-paragraph (2A) applies,◀ the amount of an interim health payment payable to a survivor of a qualifying member of a qualifying pension scheme shall be—

$$\frac{\text{▶}^1 (C(A \times 0.9)) + H - E \text{◀}}{2}$$

▶<sup>1</sup>(2A) Where a qualifying member was a party to a polygamous marriage, the amount of an interim ill health payment payable to each survivor shall be—

$$\frac{(C(A \times 0.9)) + H - F \text{◀}}{N}$$

<sup>1</sup>In para. 3(2) words added & formula substituted, sub-para. (2) added, in para. 3(3) word deleted in defn. of “D” & defns. of “F”, “H” & “N” inserted words substituted in sub-para. (4), para. 3A inserted by regs. 31(c)(i)-(v) & (d) of S.I. 2009/1851 as from 10.7.09.

(3) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

- (a) the beneficiary were entitled to an initial payment; and
- (b) the modifications in paragraph 6 applied;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

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“D” means the amount of interim pension which would be determined in accordance with Schedule 2 if—

- (a) the qualifying member were entitled to an initial payment; and
- (b) the modifications in paragraph 6 applied; <sup>1</sup>◀

“E” means the amount of interim pension payable to the survivor which would be determined in accordance with Schedule 2 if—

- (a) the survivor were entitled to an initial payment; and
- (b) the modifications in paragraph 6 applied.

▶<sup>1</sup>“F” means the sum of the interim pensions of all the survivors which would have been determined in accordance with Schedule 2 if—

- (a) the survivors had been entitled to initial payments; and
- (b) the modifications in paragraph 6 applied;

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled ▶<sup>2</sup>on◀ the day on which the qualifying member died; and

“N” means the number of survivors of that qualifying member.◀

(4) This paragraph is subject to ▶<sup>1</sup>paragraph 7.◀

**▶<sup>1</sup>Amount of an interim ill health payment for a surviving dependant**

**3A.**—(1) The amount of an interim ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with subparagraphs (2) to (5).

(2) Where an interim ill health payment is also payable to a survivor of the qualifying member and—

- (a) there is only one surviving dependant, the amount of the interim ill health payment shall be—

$$\frac{F}{2} - G$$

- (b) there are two or more surviving dependants, the amount of the interim ill health payment shall be—

$$\frac{F - G}{N}$$

(3) Where the qualifying member does not have a survivor and—

- (a) there is only one surviving dependant, the amount of the interim ill health payment shall be—

$$F - G$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(2 \times F) - G}{N}$$

(4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor under regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies; ▶<sup>3</sup>◀
- (b) a person ceases to be a surviving dependant of a qualifying member, ▶<sup>3</sup>or
- (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member.◀

the interim ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which ▶<sup>3</sup>the event referred to in paragraphs (a) to (c) occurred.◀

<sup>1</sup>In para. 3(2) word deleted in defn. of “D” & defns. of “F”, “H” & “N” inserted words substituted in sub-para. (4), para. 3A inserted by regs. 31(c)(iv)-(v) & (d) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Words substituted in para. 3(3) by reg. 17(c) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Words deleted & inserted in para. 3A, (4)(a) & (b) & by regs. 17(d)(i)-(iii) of S.I. 2010/1149 as from 2.4.10.

(5) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

- (a) the qualifying member were entitled to an annual payment; and
- (b) the modifications in paragraph 6 applied;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“F” means one half of the product of—

$$(C(A \times 0.9)) + H$$

“G” means—

- (a) where there is only one surviving dependant, the interim pension of the surviving dependant which would be determined in accordance with Schedule 2 if—
  - (i) the surviving dependant was entitled to an annual payment; and
  - (ii) the modifications in paragraph 6 applied;
- (b) where there are two or more surviving dependants, the sum of the interim pensions of all the surviving dependants which would be determined in accordance with Schedule 2 if—
  - (i) the surviving dependants were entitled to annual payments; and
  - (ii) the modifications in paragraph 6 applied;

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled <sup>1</sup>on the day on which the qualifying member died; and

“N” means the number of surviving dependants of that qualifying member. <sup>2</sup>

4. <sup>2</sup>

**Actuarial reduction**

5. The actuarial factor to be applied in <sup>3</sup>paragraphs 2 to 3A <sup>4</sup> shall be determined <sup>2</sup>, having regard to—

- (a) the age of the qualifying member;
- (b) the normal retirement age of the qualifying member; and
- (c) such other matters as the <sup>2</sup>person determining the factor <sup>4</sup> considers relevant.

**Modifications to Schedule 2**

6. The following modifications to Schedule 2 apply for the purposes of paragraphs 2 and 3 of this Schedule—

- <sup>3</sup>(zza) in paragraph 1(2), in the definition of “revalued notional pension” for “regulation 17(10)” substitute “regulation 17A(10); <sup>4</sup>
- (za) in paragraph 2(1), for the words from “the later of” to the end of paragraph (b), substitute “the day on which the beneficiary is entitled to an ill health payment in accordance with regulation 17A”;
- <sup>3</sup>(zab) in paragraph 2(3H)(b), for “Schedule 4”, substitute “Schedule 6”;
- (zac) in paragraph 3(3) and (3ZD), for “attains normal retirement age” substitute “becomes entitled to an ill health payment”; <sup>4</sup>
- (zb) in paragraph 4(3)—
  - (i) after paragraph (b) insert “and”;
  - (ii) after paragraph (c) omit “and”; and
  - (iii) omit paragraph (d); <sup>4</sup>
- (a) for <sup>2</sup>paragraph <sup>4</sup> 5(8)(b) substitute—
  - “(b) ending on the day before the day on which the scheme began to wind up.”;

<sup>1</sup>Words deleted in para. 3A(5) by regs. 17(e) of S.I. 2010/1149 as from 2.4.10.

<sup>2</sup>Para. 4 & words in para. 5 deleted, para. 6(b) & words in paras. 5(c), 6(a) & (d) substituted & para. 6(za), (zb) & (ba) inserted in Sch. 2A by regs. 31(e), (f)(i)-(ii) & (g)(i)-(v) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Words in para. 5 substituted & sub-para. (zza), (zab) & (zac) inserted by reg. 17(f)-(g) of S.I. 2010/1149 as from 2.4.10.

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<sup>1</sup>Para. 6(b) inserted in Sch. 2A by reg. 31(g)(iii) & (v) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Para. 6(bza) & (ca) inserted, paras. 6(ba) & (c) & 7(3)(c) substituted & words in para. 7(3)(b) omitted by regs. 12(a)-(d) & 13(a) of S.I. 2011/839 as from 31.3.11.

- ▶<sup>1</sup>(b) in paragraph 4(7)(b)(i) for “the day on which the qualifying member attains normal retirement age” substitute “the day from which the qualifying member is entitled to an ill health payment in accordance with regulation 17A(1)”◀
- ▶<sup>2</sup>(bza) for paragraph 4(7A)(a) substitute–
  - “(a) the day from which the qualifying member is entitled to an ill health payment in accordance with regulation 17A(1);”◀
- ▶<sup>2</sup>(ba) in paragraph 4(10A) for “annual payment” substitute “ill health payment”;◀
- ▶<sup>2</sup>(c) for paragraph 5(10)(b) substitute–
  - “(b) ending on the earlier of–
    - (i) the day on which the qualifying member became entitled to an ill health payment in accordance with regulation 17A(1); and
    - (ii) 31st March 2011.”◀
- ▶<sup>2</sup>(ca) in paragraph 5(10A) for the words from “the earlier of” to the end substitute “the day from which the qualifying member became entitled to an ill health payment”;◀
- (d) omit ▶<sup>1</sup>paragraphs 2A, 4(13) to (13D), 4A, 7, 9 and 10◀; and
- (e) for paragraph 10(ba) substitute–
  - “(ba) for “regulation 17A(1)”, in each place it occurs, substitute “regulation 17B(2)”;
  - (bb) for “ill health payment”, in each place it occurs, substitute “interim ill health payment”;
  - (bc) for paragraph 4(7)(b) substitute–
    - “(b) ending on the day from which the qualifying member is entitled to an interim ill health payment in accordance with regulation 17B(2).”.

**Cap on expected pension and actual pension**

<sup>3</sup>Para. 7(1) & words in sub-para. (2)(b) substituted, para. 7(3)-(5) inserted by reg. 31(h)(i)-(iii) of S.I. 2009/1851 as from 10.7.09.

- 7.—▶<sup>3</sup>(1) Where the amount of a qualifying member’s expected pension determined in accordance with paragraph 2, 3 or 3A multiplied by 0.9 exceeds the FAS cap–
- (a) the amount of the ill health payment or interim ill health payment payable to, or in respect of, that member under paragraph 2, 2A, 3 or 3A shall be determined on the basis that the product of that calculation was the amount of the FAS cap; and
  - (b) the amount “A” under paragraph 2 for the purposes of paragraph (b)(i) in the definition of “underlying rate” in paragraph 9 shall be the amount of the FAS cap;◀
- (2) Where the amount of a qualifying member’s actual pension or interim pension determined in accordance with this Schedule exceeds–
- (a) the amount of the qualifying member’s expected pension determined in accordance with paragraph 2 or 3 multiplied by 0.9; or
  - (b) ▶<sup>3</sup>the FAS cap;◀

no ill health payment or interim ill health payment shall be payable to, or in respect of, that member.

- ▶<sup>3</sup>(3) In this paragraph, “the FAS cap” is–
  - (a) where the qualifying member became entitled to an ill health payment in the period beginning on 1st April 2008 and ending on 31st March 2009, £27,987;
  - (b) where the qualifying member became entitled, or becomes entitled, to an ill health payment in the period beginning on 1st April 2009 and ending on 31st March 2010, £29,386; ▶<sup>2</sup>◀
  - ▶<sup>2</sup>(c) where the qualifying member becomes entitled to an ill health payment in the period beginning 1st April 2010 and ending on 31st March 2011, £29,386; and
  - (d) where the beneficiary becomes entitled to an ill health payment after 31st March 2011, the amount determined in accordance with sub-paragraph (4).◀

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(4) For each successive period of 12 months from ►<sup>1</sup>1st April 2011◄, the FAS cap shall be—

- (a) where paragraph (b) does not apply, the amount of the FAS cap for the previous period of 12 months increased by the percentage increase ►<sup>1</sup>in the general level of prices◄ for the period of 12 months ending on the 30th September falling within that previous period of 12 months; or
- (b) where there is no such percentage increase, the amount of the FAS cap for the previous period of 12 months.

(5) Where the amount of the FAS cap determined in accordance with sub-paragraph (3)(c) results in a fraction of a pound, that fraction shall be treated as a pound.◄

<sup>1</sup>Words in para. 7(4) & (4)(a) by reg. (13)(b) of S.I. 2011/839 as from 31.3.11.

**Rounding**

8. Where the amount of an ill health payment or interim ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.◄

**►<sup>2</sup>Annual increase to an ill health payment**

9.—(1) Except where there is no percentage increase in the ►<sup>3</sup>general level of prices◄ for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an amount determined in accordance with this Schedule shall be entitled, on the indexation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date, or
- (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.

<sup>2</sup>Paras. 9, 10 & 11 inserted in Sch. 2A by regs. 31(i) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Words in para. 9(1) & (2) substituted by reg. 14 of S.I. 2011/839 as from 31.12.11.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the ►<sup>3</sup>general level of prices◄ for the period of 12 months ending with the 31st May last falling before the indexation date; and
- (b) 2.5%;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“E” means so much of the expected pension as is attributable to post-1997 service;

“post-1997 service” means—

- (a) pensionable service (whether actual or notional) which occurs on or after 6th April 1997; or
- (b) where the ill health payment is payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“underlying rate” means—

- (a) the aggregate of—
  - (i) the product of X multiplied by (C x E);
  - (ii) where the beneficiary is a survivor or a surviving dependant of a qualifying member, the product of X multiplied by W; and
  - (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; or
- (b) where paragraph 7(1) applies, the aggregate of—
  - (i) so much of the amount “A” for the purposes of paragraph 2 as is, proportionately, attributable to post-1997 service; and

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(ii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;

“W” means the aggregate of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on ►<sup>1</sup>◄ the day on which the qualifying member died;

“X” means—

- (a) 0.9, where the beneficiary is the qualifying member;
- (b) 0.45, where the beneficiary is a survivor who is not a survivor to whom paragraph 2(2A) applies;

<sup>1</sup>Words deleted in para. 9(2) & defn. of W by reg. 17(h) S.I. 2010/1149 as from 2.4.10.

- (c) the product of 0.45 divided by Y, where the beneficiary is a survivor to whom paragraph 2(2A) applies;
- (d) the product of 0.9 divided by Z, where the beneficiary is a surviving dependant and the qualifying member does not have a survivor; or
- (e) the product of 0.45 divided by Z, where the beneficiary is a surviving dependant and an ill health payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

(3) In any case where the scheme manager is satisfied, having regard to the information available, that it is not possible for the scheme manager to determine the amount of the amount “A” which is attributable to post-1997 service for the purposes of this paragraph, the scheme manager shall determine that amount, having regard to such matters as the scheme manager considers relevant.

### Annual redetermination

**10.—**(1) This paragraph applies where—

- (a) on the first indexation date following the date on which the beneficiary first became entitled to an ill health payment; and
- (b) on any indexation date following that first indexation date;

the annual rate of annuity which has been or could have been paid to the beneficiary as at that indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has, or had been, determined, is higher as a result of indexation or revaluation than the annual rate determined in accordance with the preceding paragraphs of this Schedule.

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to that beneficiary with effect from the indexation date.

(3) When redetermining an ill health payment under sub-paragraph (2), the actual pension shall be the annual rate of annuity which has been or could have been paid to the beneficiary as at the indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has, or had been, determined, on the basis of, and having regard to, the matters referred to in paragraph 2(3) of Schedule 2.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of annuity for the purposes of this paragraph, it shall determine that annual rate having regard to such matters as it considers relevant.

(5) Where the scheme manager is satisfied that increases have been, are being, or will be made to the annual rate of annuity, and it considers that those increases are not reasonable, it may determine the annual rate of annuity for the purposes of this paragraph on the basis of the sum which would discharge the liability of the scheme to the beneficiary and of such other matters as it considers relevant.

### Bridging pensions

**11.—**(1) This paragraph applies where—

- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under paragraph 3(2) or 4(2) of Schedule 2 (for the purposes of determining an ill health payment) includes an amount which, under the scheme rules, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and

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<sup>1</sup>Para. 11(b) substituted by reg. 17(i) of S.I. 2010/1149 as from 2.4.10.

►<sup>1</sup>(b) either–

- (i) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme; or
- (ii) a notional pension has been determined in respect of the beneficiary which includes an amount in respect of an amount which under scheme rules would be payable for a period which is shorter than the period in respect of which the remainder of the pension would be payable. ◀

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to that beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme.

(3) When redetermining an ill health payment under sub-paragraph (2)–

- (a) the annual rate of the pension for the purposes of paragraph 3(3)(a) of Schedule 2 shall be the annual rate of pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day which is the day before the day on which the qualifying pension scheme began to be wound up;
- (b) the annual rate of the pension for the purposes of paragraph 3(3)(b)(i) of Schedule 2 shall be the amount which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day on which the qualifying member attained normal retirement age;
- (c) the amount specified in paragraph 4(3)(a) of Schedule 2 shall be the amount determined in accordance with that paragraph less the amount which is the amount which was payable for the shorter period referred to in sub-paragraph (1)(a);
- (d) the amount which was payable for the shorter period referred to in sub-paragraph (1)(a) shall be disregarded when determining the revaluation amounts; and
- (e) the beneficiary shall be entitled to so much of the total amount of the annual increases determined in accordance with paragraph 9 payable to the beneficiary as at the date referred to in sub-paragraph (2) as are attributable to the amount of expected pension determined in accordance with this paragraph.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of pension for the purposes of sub-paragraph (3)(a) or (b) or any one of the amounts for the purposes of sub-paragraph (3)(c) to (e) it shall determine that annual rate or amount, having regard to such matters as it considers relevant.

(5) In sub-paragraph (3)(d) “the revaluation amounts” means–

- (a) the revaluation amount referred to in paragraph 3(3)(b)(ii) of Schedule 2; and
- (b) the revaluation amounts referred to in paragraph 4(3)(b) and (c) of Schedule 2. ◀

►<sup>1</sup>SCHEDULE 3

## DETERMINATION OF CERTAIN ANNUAL PAYMENTS

<sup>1</sup>Schs. 3-7 inserted by  
reg. 18 of S.I. 2010/  
1149 as from 2.4.10.

**Introductory**

**1.**—(1) This Schedule applies for the purposes of determining the amount of an annual payment payable to a beneficiary to whom regulation 17(8)(b) to (f) or (16)(a) applies.

(2) In this Schedule—

“A” means—

- (a) where the qualifying member is a qualifying member to whom regulation 17D applied, the amount by which the qualifying member’s annual payment has been commuted; and
- (b) in all other cases, nil;

“B” means—

- (a) where either or both sub-paragraphs (3) or (6) apply, the amount by which the scheme manager determines the annual payment which would otherwise be payable under this Schedule is to be reduced;
- (b) where the beneficiary is a qualifying member to whom regulation 17H applied, the amount, if any, by which the scheme manager determined the payment which would otherwise have been payable under Schedule 7 should be reduced; and
- (c) in all other cases, nil;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) of paragraph 4 applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where paragraph 4(4)(a) applies and, as a result, the annual payment payable to a surviving dependant is redetermined under paragraph 4(3)(a), nil; and
- (c) in all other cases, nil;

“J” means—

- (a) where the qualifying member became entitled to an annual payment or began to receive a present payment from the qualifying scheme prior to the day on which the transfer notice was given, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and
- (b) in all other cases, nil;

“N” means—

- (a) in paragraph 3, the number of survivors of that qualifying member; and
- (b) in paragraph 4, the number of surviving dependants of that qualifying member;

“Q” means—

- (a) where the beneficiary is a person to whom regulation 17(17)(a) applies, the payment to which the qualifying member was entitled in accordance with Schedule 7 immediately before the qualifying member died; and
- (b) in all other cases, the sum of—
  - (i) R-A;
  - (ii) the total amount of any annual increases which the scheme manager considers could have been paid, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11), from the relevant date until the earlier of—

- (aa) the day on which the transfer notice is given; and
- (bb) the day on which the qualifying member died;
- (iii) where the qualifying member died after the calculation date but before the day on which the transfer notice was given, double the total amount of any annual increases which the scheme manager considers could have been paid to a survivor (on the basis that there is one survivor) from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and
- (iv) where the qualifying member died on or after the day on which the transfer notice was given, the total amount of any annual increases to which the qualifying member was entitled in accordance with paragraph 6 on the day on which the qualifying member died;

“R” means the amount of the revalued notional pension as construed in accordance with regulation 17(10);

“S” means—

- (a) where paragraph 3(2) applies, the total amount of increases to which any survivor was entitled under this Schedule on the day on which the survivor died; and
- (b) where sub-paragraph (4) of paragraph 4 applies, the total amount of increases to which any survivor was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred; and
- (c) in all other cases, nil; and

“relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an annual payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary is a qualifying member to whom paragraph (a) does not apply, but to whom paragraph (3) or (3C) applies, the date on which the qualifying member became entitled to an annual payment under that paragraph; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(3) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before the day on which a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the annual payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(4) Sub-paragraph (6) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (5) is higher or lower than the sum of—

- (a) the revalued notional pension, or the survivor notional pension, as the case may be; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d);
  - (ii) the revaluation amount determined in accordance with regulation 17(11); and

(iii) the proportion of that year which falls after the 1st January.

(5) For the purposes of sub-paragraph (4), the period is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
  - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
- (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

(6) Where this sub-paragraph applies, the scheme manager may—

- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
- (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
- (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (4)(a) and (b) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the revalued notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant.

#### **Amount of an annual payment - qualifying members**

2. The annual payment payable to a qualifying member to whom this Schedule applies shall be—

$$R - A + J - B.$$

#### **Amount of an annual payment - survivors**

3.—(1) Where this Schedule applies, the annual payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17(8)(f) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that survivor; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

## Sch. 3

less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and

(b) where regulation 17(8)(c) to (e) or (16)(a) applies—

(i) where sub-paragraph (ii) does not apply—

$$\frac{Q}{2} + S$$

(ii) where the qualifying member was a party to a polygamous marriage—

$$\frac{(0.5 \times Q) + S}{N}$$

(2) Where a survivor to whom sub-paragraph (1)(b)(ii) applies dies, the annual payment payable to all remaining survivors of the qualifying member shall be redetermined with effect from the day after the day on which the survivor died.

### Surviving Dependants

4.—(1) Where this Schedule applies, the annual payment payable to a surviving dependant of a qualifying member shall be—

(a) where regulation 17(8)(f) applies, the amount which is the sum of—

(i) the survivor notional pension determined in respect of that surviving dependant; and

(ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and

(b) where regulation 17(8)(c) to (e) or (16)(a) applies, determined in accordance with sub-paragraphs (2) to (4).

(2) Where an annual payment is also payable to a survivor of a qualifying member and—

(a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{(0.5 \times Q)}{2} + D$$

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{(0.5 \times Q) + D}{N}$$

(3) Where an annual payment is not payable to a survivor of a qualifying member and—

(a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{Q}{2} + S + D$$

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{Q + S + D}{N}$$

(4) Where—

- (a) a survivor of a qualifying member dies;
- (b) a person ceases to be a surviving dependant of a qualifying member; or
- (c) another person becomes a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

### **Rounding**

5. Where the amount of an annual payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

### **Annual increases to an annual payment**

6.—(1) Except where there is no percentage increase in the ►<sup>1</sup>general level of prices◄ for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an annual amount determined in accordance with this Schedule shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the ►<sup>1</sup>general level of prices◄ for the period of 12 months ending with the 31st May last falling before the indexation date; and
- (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) the product of X multiplied by—
  - (i) where the beneficiary is a qualifying member or a survivor or surviving dependant of a qualifying member who died on or after the calculation date—
    - (aa) where the qualifying member is not a qualifying member to whom regulation 17D applied, so much of the revalued notional pension as is attributable to post-1997 service; or
    - (bb) where the qualifying member is a qualifying member to whom regulation 17D applied, so much of the sum of R-A as is attributable to post-1997 service; and
  - (ii) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, so much of the survivor notional pension as is attributable to the qualifying member's post-1997 service;
- (b) where the beneficiary is a qualifying member, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11);
- (c) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given;

<sup>1</sup>Words in para. 6(1) & (2)(a) substituted by reg. 15 of S.I. 2011/839 as from 31.12.11.

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- (d) where the beneficiary is a survivor or a surviving dependant of a qualifying member who died on or after the calculation date but before the day on which the transfer notice was given, the sum of—
- (i) the product of X multiplied by the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and
  - (ii) the total amount of any annual increases which the scheme manager considers could have been paid to the beneficiary from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11);
- (e) where the beneficiary is the survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the product of X multiplied by the sum of—
- (i) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17(11); and
  - (ii) the total amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day on which the qualifying member died; and
- (f) any annual increases to which the beneficiary is entitled under this Schedule immediately before the indexation date;

“post-1997 service” means—

- (a) pensionable service (either actual or notional) which occurred on or after 6th April 1997; or
- (b) where the pension was payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“X” means—

- (a) 1, where the beneficiary is the qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined;
- (b) 0.5, where the beneficiary is a survivor who is neither—
  - (i) a survivor to whom paragraph 3(1)(b)(ii) applies; nor
  - (ii) a survivor in respect of whom a survivor notional pension has been determined;
- (c) the product of 0.5 divided by Y, where the beneficiary is a survivor to whom paragraph 3(1)(b)(ii) applies;
- (d) the product of 1 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and the qualifying member does not have a survivor; or
- (e) the product of 0.5 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and an annual payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or

- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

(3) In determining the underlying rate where a qualifying member is a qualifying member to whom regulation 17D applied, the amount of R-A that is attributable to post-1997 service is determined by attributing the sum to pre-1997 service and post-1997 service in the same proportions as the revalued notional pension would have been attributed had regulation 17D not applied.

#### SCHEDULE 4 Regulation 17(8)(g) to (k) and (16)(b)

### DETERMINATION OF ANNUAL PAYMENTS WHERE A PRESENT PAYMENT WAS BEING RECEIVED ON THE COMING INTO FORCE OF THE FINANCIAL ASSISTANCE SCHEME (MISCELLANEOUS AMENDMENTS) REGULATIONS 2010

#### Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment payable to a beneficiary to whom regulation 17(8)(g) to (k) or (16)(b) applies.

(2) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the annual payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3) Sub-paragraph (5) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (4) is higher or lower than the sum of—

- (a) the notional pension, or the survivor notional pension, as the case may be; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d); and
  - (ii) the proportion of that year which falls after the 1st January.

(4) For the purposes of sub-paragraph (3), the period is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
  - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
- (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

(5) Where this sub-paragraph applies, the scheme manager may—

- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;

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- (ii) the amount of the sum of–
  - (aa) the notional pension or survivor notional pension; and
  - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
- (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
- (iv) such other matters as the scheme manager considers relevant; and
- (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (3)(a) and (b) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to–
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of–
    - (aa) the notional pension or survivor notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
  - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
  - (iv) such other matters as the scheme manager considers relevant.

## (6) In this Schedule–

“relevant date” means the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4); and

“relevant proportion”, in relation to a beneficiary, means the proportion of the notional pension which relates to the beneficiary.

## (7) Where–

- (a) the beneficiary is a qualifying member to whom regulation 17H applied; and
- (b) the scheme manager made a determination in accordance with paragraph 1(2) or (5) of Schedule 7, to reduce the payment under that Schedule by any amount,

the scheme manager shall reduce the amount of the annual payment payable under this Schedule by the same amount.

**Qualifying members**

**2.** Where this Schedule applies, the annual payment payable to a qualifying member shall be the sum of–

- (a) the notional pension determined in respect of the qualifying member; and
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2), (5) or (7).

**Survivors**

**3.** Where this Schedule applies, the annual payment payable to a survivor of a qualifying member shall be–

- (a) where regulation 17(8)(h) or (i) applies, the amount which is the sum of–
  - (i) the survivor notional pension determined in respect of that survivor; and

- (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);

- (b) where regulation 17(8)(j) applies, the amount which is the sum of–
  - (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice was given;
- (c) where regulation 17(8)(k) applies, the amount which is the sum of–
  - (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and
  - (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died; and
- (d) where regulation 17(17)(b) applies, the relevant proportion of the payment to which the qualifying member was entitled in accordance with Schedule 7 immediately before the qualifying member died.

### Surviving Dependants

4. Where this Schedule applies, the annual payment payable to a surviving dependant of a qualifying member shall be–

- (a) where regulation 17(8)(h) or (i) applies, the amount which is the sum of–
  - (i) the survivor notional pension determined in respect of that surviving dependant; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);

- (b) where regulation 17(8)(j) applies, the amount which is the sum of–
  - (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;
  - (ii) the relevant proportion of the amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension, from the day after the day on which the qualifying member died until the day on which the transfer notice was given;

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- (c) where regulation 17(8)(k) applies, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and
  - (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died; and
- (d) where regulation 17(17)(b) applies, the relevant proportion of the payment to which the qualifying member was entitled in accordance with Schedule 7 immediately before the qualifying member died.

**Redetermination**

5.—(1) This paragraph applies where the notional pension or survivor notional pension includes an amount in respect of an amount which under scheme rules—

- (a) would be payable for a period which is shorter than the period in respect of which the remainder of a pension would be payable; or
- (b) would be payable as a result of a qualifying member dying within a period specified in scheme rules which begins on the day on which the member became entitled to a pension from the scheme, or the day on which the pension was first paid.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to the beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable, or the period referred to in sub-paragraph (1)(b) would have ended.

(3) When redetermining an annual payment under sub-paragraph (2), the scheme manager shall redetermine the notional pension or survivor notional pension having regard to the amount referred to in sub-paragraph (1).

**Rounding**

6. Where the amount of an annual payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

**Annual increases to an annual payment**

7.—(1) Except where there is no percentage increase in the <sup>1</sup>general level of prices<sup>◀</sup> for the period of 12 months ending with 31st May last falling before the indexation date, where the asset share determined in respect of the beneficiary was sufficient to be applied to the amounts referred to in regulation 27(7)(a)(ii) or (10)(a)(ii), a beneficiary shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the <sup>1</sup>general level of prices<sup>◀</sup> for the period of 12 months ending with 31st May last falling before the indexation date; and
- (b) 2.5%;

<sup>1</sup>Words in para. 7(1) & (2)(a) substituted by reg. 15 of S.I. 2011/839 as from 31.12.11.

“underlying rate” means—

- (a) where the beneficiary is a qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the aggregate of—
  - (i) so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) or (10)(a)(ii) could be increased;
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension, or survivor notional pension, as the case may be, from the relevant date until the day on which the transfer notice is given; and
  - (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;
- (b) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the aggregate of—
  - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid to the qualifying member on the notional pension from the relevant date until the day on which the transfer notice is given;
  - (iii) the relevant proportion of any annual increases to which the qualifying member was entitled in accordance with this Schedule on the day on which the qualifying member died; and
  - (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; and
- (c) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the calculation date but prior to the day on which the transfer notice was given, the aggregate of—
  - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the relevant date until the day on which the qualifying member died;
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and
  - (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date.

(3) In the definition of “underlying rate” in sub-paragraph (2), the reference to annual payments is to the amount of annual payment prior to any reduction made by the scheme manager under paragraph 1(2) or (5).

## SCHEDULE 5

Regulation 17A(8)(b) to (e)

## DETERMINATION OF CERTAIN ILL HEALTH PAYMENTS

**Introductory**

1.—(1) This Schedule applies for the purposes of determining the amount of an ill health payment payable to a beneficiary to whom regulation 17A(8)(b) to (e) applies.

(2) In this Schedule—

“A” means—

- (a) where the qualifying member is a qualifying member to whom regulation 17D applied, the amount by which the qualifying member's ill health payment has been commuted; and
- (b) in all other cases, nil;

“B” means—

- (a) where either or both sub-paragraphs (3) or (6) apply, the amount by which the scheme manager determines the ill health payment which would otherwise be payable under this Schedule is to be reduced;
- (b) where the beneficiary is a qualifying member to whom regulation 17H applied, the amount, if any, by which the scheme manager determined the payment which would otherwise have been payable under Schedule 7 should be reduced; and
- (c) in all other cases, nil;

“C” means—

- (a) 1, where the qualifying member was—
  - (i) entitled to an ill health payment on the calculation date; or
  - (ii) receiving a present payment from the scheme on the calculation date; and
- (b) the actuarial factor to be applied in respect of the beneficiary for the purposes of this Schedule, where the qualifying member was not receiving a present payment from the scheme on the calculation date and became entitled to an ill health payment after the calculation date;

“D” means—

- (a) subject to paragraph (b), where sub-paragraph (4) of paragraph 4 applies, the total amount of annual increases to which any surviving dependant was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (b) where paragraph 4(4)(a) applies and, as a result, the ill health payment payable to a surviving dependant is redetermined under paragraph 4(3)(a), nil; and
- (c) in all other cases, nil;

“J” means—

- (a) where the qualifying member became entitled to an ill health payment or began to receive a present payment from the qualifying scheme prior to the day on which the transfer notice was given, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A (11); and
- (b) in all other cases, nil;

“N” means—

- (a) in paragraph 3, the number of survivors of that qualifying member; and
- (b) in paragraph 4, the number of surviving dependants of that qualifying member;

“Q” means the sum of—

- (a) the product of C multiplied by the revalued notional pension in respect of the qualifying member;
- (b) the total amount of any annual increases which the scheme manager considers could have been paid, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11), from the relevant date until the earlier of—
  - (i) the day on which the transfer notice is given; and
  - (ii) the day on which the qualifying member died;
- (c) where the qualifying member died after the calculation date but before the day on which the transfer notice was given, double the total amount of any annual increases which the scheme manager considers could have been paid to a survivor (on the basis that there is one survivor) from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11); and
- (d) the total amount of any annual increases to which the qualifying member was entitled in accordance with paragraph 6 on the day on which the qualifying member died,

less, where the qualifying member was a qualifying member to whom regulation 17D applied, the amount by which the qualifying member’s ill health payment has been commuted;

“R” means the revalued notional pension as construed in accordance with regulation 17A(10);

“S” means—

- (a) where paragraph 3(2) applies, the total amount of annual increases to which any survivor was entitled under this Schedule on the day on which the survivor died;
- (b) where sub-paragraph (4) of paragraph 4 applies, the total amount of annual increases to which any survivor was entitled under this Schedule on the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred; and
- (c) in all other cases, nil;

“relevant date” means—

- (a) where the beneficiary began to receive a payment from the scheme after the calculation date and prior to becoming entitled to an ill health payment under these Regulations, the date on which the beneficiary began to receive a present payment from the scheme;
- (b) where the beneficiary became entitled to an ill health payment after the calculation date and prior to receiving a payment from the scheme, the date on which the beneficiary became so entitled; and
- (c) in all other cases, the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4).

(3) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the ill health payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(4) Sub-paragraph (6) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (5) is higher or lower than the sum of—

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- (a) the revalued notional pension, or the survivor notional pension, as the case may be; and
  - (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
    - (i) the determination under regulation 27(1)(d);
    - (ii) the revaluation amount determined in accordance with regulation 17A(11); and
    - (iii) the proportion of that year which falls after the 1st January.
- (5) For the purposes of sub-paragraph (4), the period is the period from—
- (a) the earlier of—
    - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and
    - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
  - (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

- (6) Where this sub-paragraph applies, the scheme manager may—
- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the revalued notional pension or survivor notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
    - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
    - (iv) such other matters as the scheme manager considers relevant; and
  - (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (4)(a) and (b) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the revalued notional pension or survivor notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
    - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
    - (iv) such other matters as the scheme manager considers relevant.

#### **Amount of an ill health payment - qualifying members**

2. The ill health payment payable to a qualifying member to whom this Schedule applies shall be—

$$(C \times R) - A + J - B.$$

**Amount of an ill health payment - survivors**

3.—(1) Where this Schedule applies, the ill health payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17A(8)(e) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that survivor; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and

- (b) where regulation 17A(8)(c) or (d) applies—
  - (i) where sub-paragraph (ii) does not apply—

$$\frac{Q}{2} + S$$

- (ii) where the qualifying member was a party to a polygamous marriage—

$$\frac{(0.5 \times Q) + S}{N}$$

(2) Where a survivor to whom sub-paragraph (1)(b)(ii) applies dies, the ill health payment payable to all remaining survivors of the qualifying member shall be redetermined with effect from the day after the day on which the survivor died.

**Amount of an ill health payment - surviving dependants**

4.—(1) Where this Schedule applies, the ill health payment payable to a surviving dependant of a qualifying member shall be—

- (a) where regulation 17A(8)(e) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that surviving dependant; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given,

less the amount, if any, by which the scheme manager determines the payment should be reduced in accordance with paragraph 1(3) or (6); and

- (b) where regulation 17A(8)(b) to (d) applies, determined in accordance with sub-paragraphs (2) to (4).

(2) Where an ill health payment is also payable to a survivor of a qualifying member and—

- (a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{0.5 \times Q}{2} + D;$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(0.5 \times Q)}{N} + D;$$

(3) Where an ill health payment is not payable to a survivor of a qualifying member and—

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- (a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{Q}{2} + S + D;$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{Q + S + D}{N}$$

- (4) Where—

- (a) a survivor of a qualifying member dies;  
 (b) a person ceases to be a surviving dependant of a qualifying member; or  
 (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member,

the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

**Rounding**

5. Where the amount of an ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

**Annual increases to an ill health payment**

6.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an amount determined in accordance with this Schedule shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or  
 (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.

- (2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date; and  
 (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) the product of X multiplied by (C x V);  
 (b) where the beneficiary is a qualifying member, the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11);  
 (c) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the relevant date until the day on which the transfer notice is given;  
 (d) where the beneficiary is a survivor or a surviving dependant of a qualifying member who died on or after the calculation date but before the day on which the transfer notice was given, the sum of—

- (i) the product of X multiplied by the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11); and
- (ii) the total amount of any annual increases which the scheme manager considers could have been paid to the beneficiary from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11);
- (e) where the beneficiary is the survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the product of X multiplied by the sum of–
  - (i) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice was given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with regulation 17A(11); and
  - (ii) the total amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day on which the qualifying member died; and
- (f) any annual increases to which the beneficiary is entitled under this Schedule immediately before the indexation date;

“post-1997 service” means–

- (a) pensionable service (either actual or notional) which occurred on or after 6th April 1997; or
- (b) where the pension was payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“V” means–

- (a) where the beneficiary is a qualifying member or a survivor or surviving dependant of a qualifying member who died on or after the calculation date–
  - (i) where the qualifying member is not a qualifying member to whom regulation 17D applied, so much of the revalued notional pension as is attributable to post-1997 service; or
  - (ii) where the qualifying member is a qualifying member to whom regulation 17D applied, so much of the sum of R-A as is attributable to post-1997 service; and
- (b) where the beneficiary is a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, so much of the survivor notional pension as is attributable to the qualifying member’s post 1997 service;

“W” means the amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day on which the qualifying member died;

“X” means–

- (a) 1, where the beneficiary is the qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined;
- (b) 0.5, where the beneficiary is a survivor who is neither–
  - (i) a survivor to whom paragraph 3(1)(b)(ii) applies; nor
  - (ii) a survivor in respect of whom a survivor notional pension has been determined;

- (c) the product of 0.5 divided by Y, where the beneficiary is a survivor to whom paragraph 3(1)(b)(ii) applies;
- (d) the product of 1 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and the qualifying member does not have a survivor; or
- (e) the product of 0.5 divided by Z, where the beneficiary is a surviving dependant in respect of whom a survivor notional pension has not been determined and an annual payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

(3) In determining the underlying rate where a qualifying member is a qualifying member to whom regulation 17D applied, the amount of R-A that is attributable to post-1997 service is determined by attributing the sum to pre-1997 service and post-1997 service in the same proportions as the revalued notional pension would have been attributed had regulation 17D not applied.

## SCHEDULE 6

Regulation 17A(8)(f) to (i)

### DETERMINATION OF ILL HEALTH PAYMENTS WHERE A PRESENT PAYMENT WAS BEING RECEIVED ON THE COMING INTO FORCE OF THE FINANCIAL ASSISTANCE SCHEME (MISCELLANEOUS AMENDMENTS) REGULATIONS 2010

#### Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of an ill health payment payable to a beneficiary to whom regulation 17A(8)(f) to (i) applies.

(2) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the ill health payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3) Sub-paragraph (5) applies where the scheme manager is satisfied that the sum of the interim pension paid to a beneficiary and any payment made under these Regulations in respect of any year in the period determined in accordance with sub-paragraph (4) is higher or lower than the sum of—

- (a) the notional pension, or the survivor notional pension, as the case may be; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d); and
  - (ii) the proportion of that year which falls after the 1st January.

(4) For the purposes of sub-paragraph (3), the period is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations; and

- (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; or
- (b) the day on which the qualifying pension scheme began to be wound up if that is later than the day determined in accordance with paragraph (a),

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

- (5) Where this sub-paragraph applies, the scheme manager may—
- (a) determine the amount by which the annual payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the notional pension or survivor notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
    - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
    - (iv) such other matters as the scheme manager considers relevant; and
  - (b) where the sum of the interim pension paid and any payments made under these Regulations in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (3)(a) and (b) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
    - (i) the amount of interim pension which was paid to the beneficiary;
    - (ii) the amount of the sum of—
      - (aa) the notional pension or survivor notional pension; and
      - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid;
    - (iii) the amount of any payments made under these Regulations prior to the scheme manager giving the transfer notice; and
    - (iv) such other matters as the scheme manager considers relevant.

- (6) In this Schedule—

“relevant date” means the date from which the notional pension or survivor notional pension could have been payable as determined in accordance with regulation 27(3) and (4); and

“relevant proportion”, in relation to a beneficiary, means the proportion of the notional pension which relates to the beneficiary.

- (7) Where—

- (a) the beneficiary is a qualifying member to whom regulation 17H applied; and
- (b) the scheme manager made a determination in accordance with paragraph 1(2) or (5) of Schedule 7, to reduce the payment under that Schedule by any amount,

the scheme manager shall reduce the amount of the ill health payment payable under this Schedule by the same amount.

### Qualifying members

2. Where this Schedule applies, the ill health payment payable to a qualifying member shall be the sum of—

- (a) the notional pension determined in respect of the qualifying member; and

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- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2), (5) or (7).

**Survivors**

**3.** Where this Schedule applies, the ill health payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17A(8)(g) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that survivor; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);

- (b) where regulation 17(8)(h) applies, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension, from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and
- (c) where regulation 17A(8)(i) applies, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the survivor;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and
  - (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died.

**Surviving Dependants**

**4.** Where this Schedule applies, the ill health payment payable to a surviving dependant of a qualifying member shall be—

- (a) where regulation 17A(8)(g) applies, the amount which is the sum of—
  - (i) the survivor notional pension determined in respect of that surviving dependant; and
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the survivor notional pension from the day after the qualifying member died until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5);

- (b) where regulation 17A(8)(h) applies, the amount which is the sum of—

- (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;
  - (ii) the relevant proportion of the amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the qualifying member died; and
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension, from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and
- (c) where regulation 17A(8)(i) applies, the amount which is the sum of—
- (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which transfer notice was given; and
  - (iii) the relevant proportion of the total amount of any annual increases to which the qualifying member was entitled on the day on which the qualifying member died.

### Redetermination

5.—(1) This paragraph applies where the notional pension or survivor notional pension includes an amount in respect of an amount which under scheme rules—

- (a) would be payable for a period which is shorter than the period in respect of which the remainder of a pension would be payable; or
- (b) would be payable as a result of a qualifying member dying within a period specified in scheme rules which begins on the day on which the member became entitled to a pension from the scheme, or the day on which the pension was first paid.

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to the beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable, or the period referred to within sub-paragraph (1)(b) would have ended.

(3) When redetermining an ill health payment under sub-paragraph (2), the scheme manager shall redetermine the notional pension or survivor notional pension having regard to the amount referred to in sub-paragraph (1).

### Rounding

6. Where the amount of an ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

### Annual increases to an ill health payment

7.—(1) Except where there is no percentage increase in the <sup>1</sup>general level of prices<sup>2</sup> for the period of 12 months ending with 31st May last falling before the indexation date, where the asset share determined in respect of the beneficiary was sufficient to be applied to the amounts referred to in regulation 27(7)(a)(ii) or (10)(a)(ii), a beneficiary shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.

<sup>1</sup>Words in para. 7(1) substituted by reg. 15 of S.I. 2011/839 as from 31.12.11.

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<sup>1</sup>Words in para. 7(2)(a) substituted by reg. 15 of S.I. 2011/839 as from 31.12.11.

(2) In this paragraph–

“appropriate percentage” means the lesser of–

- (a) the percentage increase in the <sup>1</sup>general level of prices<sup>1</sup> for the period of 12 months ending with 31st May last falling before the indexation date; and
- (b) 2.5%; and

“underlying rate” means–

- (a) where the beneficiary is a qualifying member or a survivor or surviving dependant in respect of whom a survivor notional pension has been determined, the aggregate of–
  - (i) so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) or (10)(a)(ii) could be increased;
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension, or survivor notional pension, as the case may be, from the relevant date until the day on which the transfer notice is given; and
  - (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;
- (b) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the day on which the transfer notice was given, the aggregate of–
  - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
  - (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid to the qualifying member on the notional pension from the relevant date until the day on which the transfer notice is given;
  - (iii) the relevant proportion of any annual increases to which the qualifying member was entitled in accordance with this Schedule on the day on which the qualifying member died; and
  - (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; and
- (c) where the beneficiary is a survivor or surviving dependant of a qualifying member who died after the calculation date but prior to the day on which the transfer notice was given, the aggregate of–
  - (i) the relevant proportion of so much of the annual payments as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
  - (ii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the relevant date until the day on which the qualifying member died;
  - (iii) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the relevant proportion of the notional pension from the day after the day on which the qualifying member died until the day on which the transfer notice was given; and
  - (iv) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date.

(3) In the definition of "underlying rate" in sub-paragraph (2), the reference to annual payments is to the amount of annual payment prior to any reduction made by the scheme manager under paragraph 1(2) or (5).

## SCHEDULE 7 Regulations 17G(2) and 17H(2)

### DETERMINATION OF PAYMENTS TO EARLY RETIREES AND OTHER BENEFICIARIES

#### Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of a payment payable to a person to whom regulation 17G or 17H applies.

(2) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is given, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the payment which would otherwise be payable under this Schedule is to be reduced, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3) Sub-paragraph (5) applies where the scheme manager is satisfied that the amount of interim pension paid to a beneficiary in respect of any year in the period determined in accordance with sub-paragraph (4) is higher or lower than the sum of—

- (a) the notional pension; and
- (b) any annual increases or proportion of annual increases, which the scheme manager considers could have been paid in respect of that year, taking into account—
  - (i) the determination under regulation 27(1)(d); and
  - (ii) the proportion of that year which falls after the 1st January.

(4) For the purposes of sub-paragraph (3), the period is the period from the later of—

- (a) the day on which the beneficiary began to receive a payment from the scheme; and
- (b) the day on which the qualifying pension scheme began to be wound up,

until the day on which the scheme manager gave a transfer notice to the scheme trustees or managers.

(5) Where this sub-paragraph applies, the scheme manager may—

- (a) determine the amount by which the payment which would otherwise be payable under this Schedule in respect of the beneficiary is to be reduced, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid; and
  - (iii) such other matters as the scheme manager considers relevant; and
- (b) where the interim pension paid in respect of any year is lower than the sum referred to in sub-paragraph (3) in respect of that year, make a payment to the beneficiary or, where the beneficiary has died prior to the scheme manager making this determination, to the beneficiary's estate, having regard to—
  - (i) the amount of interim pension which was paid to the beneficiary;
  - (ii) the amount of the sum of—
    - (aa) the notional pension; and
    - (bb) any annual increases, or proportion of annual increases, which the scheme manager considers could have been paid; and
  - (iii) such other matters as the scheme manager considers relevant.

**Amount of the payment where regulation 17G applies**

2. Where a person is entitled to a payment in accordance with regulation 17G, the amount of that payment shall be sum of—

- (a) the amount of the notional pension determined in respect of that person; and
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the day on which the scheme's liability to provide a pension or other benefit to the person arose until the day on which the transfer notice was given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5).

**Amount of the payment where regulation 17H applies**

3. Where a qualifying member is entitled to a payment in accordance with regulation 17H, the amount of that payment shall be the sum of—

- (a) the notional pension in relation to the qualifying member; and
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the later of—
  - (i) the date on which the qualifying member began to receive a present payment from the scheme; and
  - (ii) the date on which the scheme began to be wound up, until the day on which the transfer notice is given,

less any amount by which the scheme manager determines a payment is to be reduced under paragraph 1(2) or (5).

**Annual increases**

<sup>1</sup>Words in para. 4(1) & (2)(a) substituted by reg. 15 of S.I. 2011/839 as from 31.12.11.

4.—(1) Except where there is no percentage increase in the <sup>1</sup>general level of prices<sup>1</sup> for the period of 12 months ending with 31st May last falling before the indexation date, where the asset share determined in respect of a person to whom an amount is payable in accordance with this Schedule was sufficient to be applied to annual increases, that person shall be entitled, on each indexation date after the day on which the transfer notice is given, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where that person first became entitled to a payment in accordance with regulation 17G or 17H during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the <sup>1</sup>general level of prices<sup>1</sup> for the period of 12 months ending with 31st May last falling before the indexation date; and
- (b) 2.5%;

“relevant date” means—

- (a) in the cases of a person to whom regulation 17G applies, the day on which the scheme's liability to provide a pension or other benefit to the person arose; and
- (b) in the case of a person to whom regulation 17H applies, the later of—
  - (i) the day from which the beneficiary began to receive a present payment from the scheme; and
  - (ii) the day on which the scheme began to be wound up.

“underlying rate” means—  
the aggregate of—

- (a)
  - (i) where regulation 17G applies, so much of the payment as the scheme manager determined under regulation 27(7)(b)(ii) could be increased; and
  - (ii) where regulation 17H applies, so much of the payment as the scheme manager determined under regulation 27(7)(a)(ii) could be increased;
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 27 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given; and
- (c) any annual increases to which the person is entitled in accordance with sub-paragraph (1) immediately before the indexation date.

(3) The reference to payments in the definition of “underlying rate” in sub-paragraph (2) is to the amount of payment prior to any reduction made by the scheme manager under paragraph 1(2) or (5).◀

#### EXPLANATORY NOTE

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

These Regulations establish a financial assistance scheme, allowing for payments to be made to, or in respect of, certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members are unlikely to be satisfied in full.

Part 1 makes provision for citation, commencement and extent, and also for interpretation of words and phrases used in the Regulations. In particular, it prescribes when a scheme is deemed to have started to wind up for the purposes of these Regulations (regulation 3), applies parts of Parts 1 and 2 of the Pensions Act 2004 (c. 35) for the purposes of these Regulations with the modifications prescribed in Schedule 1 and makes special provision for Northern Ireland (regulation 4).

Part 2 establishes the financial assistance scheme. It provides that the scheme is to be managed by the Secretary of State (regulation 5), that there is to be a fund out of which payments are to be made which shall consist both of monies allocated by Parliament and other amounts which may be provided by third parties on a voluntary basis (regulation 6), that the Secretary of State must report to Parliament on the operation of the financial assistance scheme in respect of each financial year (regulation 7) and that the scheme manager may delegate performance of his functions arising under, or by virtue of, these Regulations to another person on his behalf (regulation 8).

Part 3 prescribes which occupational pension schemes are to be regarded as qualifying pension schemes for the purposes of these Regulations. It both lists the basic criteria (regulation 9) and describes certain types of scheme which are not to be regarded as qualifying pension schemes (regulation 10). It also prescribes the conditions which must apply to the employer for a scheme to be so regarded (regulations 11 and 12), what are to be insolvency events for the purposes of these Regulations (regulation 13) and what details about the scheme must be provided to the scheme manager before the scheme can be regarded as a qualifying pension scheme (regulation 14).

Part 4 prescribes which persons are to be regarded as qualifying members for the purposes of these Regulations (regulation 15) and the basis for ascertaining when a scheme is regarded as having insufficient assets for discharging its liability to the member (regulation 16).

Part 5 prescribes that annual payments are payable to, or in respect of, qualifying members of qualifying pension schemes, that the amounts of those payments are to be determined in accordance with Schedule 2 and that those payments are payable for the life of the beneficiary (regulation 17). It also prescribes that initial payments can be made to qualifying members in certain circumstances (regulation 18).

Part 6 deals with the administration of payments. It prescribes how and when annual payments and initial payments are to be paid (regulation 19), and the arrangements for making payments by direct credit transfer (regulation 20).

The modifications in Schedule 1–

allow an inspector on behalf of the Pensions Regulator to collect information on behalf of the scheme manager (paragraph 1);

allow the Regulator to disclose restricted information to facilitate the scheme manager's functions (paragraphs 2 and 3);

allow for regulations to be prescribed which allow amounts overpaid from the financial assistance scheme to be recovered and payments from the financial assistance scheme to be suspended (paragraph 4);

allow for regulations to be prescribed to require certain information to be supplied to the scheme manager (paragraph 5);

allow notices to be issued requiring the provision of such information and for enforcement action to be taken if such information is not provided (paragraphs 6 to 9);

allow the scheme manager to use information (paragraph 10) and to disclose restricted information in certain circumstances and for certain purposes (paragraphs 11 to 14);

allow for regulations to require the scheme manager and other persons to disclose certain information in certain circumstances (paragraph 15);

make appropriate interpretation provisions (paragraph 16).

Schedule 2 prescribes the method for calculating the amount of an annual payment under these Regulations for each category of qualifying member or their survivor (paragraphs 1 to 5). It also prescribes certain benefits which are not to be taken into account in determining the annual payment (paragraph 6), for a cap to be imposed on the amount of expected or actual pension to be taken into account (paragraph 7) and for no payment to be made if the amount of the annual payment does not exceed a certain amount (paragraph 8). It also prescribes the method for calculating initial payments (paragraph 10).

A regulatory impact assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.