

The Financial Assistance Scheme Regulations 2011 – consultation on the draft regulations – Annex B – Regulations

*Draft Regulations laid before Parliament under section 316(2)(n) of the Pensions Act 2004, for approval by resolution of each House of Parliament.*

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D R A F T   S T A T U T O R Y   I N S T R U M E N T S

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**2011 No. 000**

**PENSIONS**

**The Financial Assistance Scheme Regulations 2011**

*Made* - - - - - 2011

*Coming into force* - - - In accordance with regulation 1

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SCHEDULE 5 — DETERMINATION OF PAYMENTS TO EARLY RETIREES AND OTHER BENEFICIARIES

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred upon him by sections 286, 315(2) and 318(1), (4)(a) and (5) of the Pensions Act 2004(a).

A draft of this instrument was laid before Parliament in accordance with section 316(2)(n) of that Act and approved by resolution of each House of Parliament.

[The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of that Act.]

## PART 1 GENERAL

### Citation, commencement and extent

1. These Regulations may be cited as the Financial Assistance Scheme Regulations 2011 and shall come into force on the day after the day on which they are made.

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(a) 2004 c 35. 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”.

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## 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 2005 Regulations” means the Financial Assistance Scheme Regulations 2005(e) as amended unless the context otherwise requires;

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

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

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(h);

“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 regulation 23 or 24 and Schedule 2, 3 or 4, and any reference in these Regulations to an annual payment includes an ill health payment as defined in the 2005 Regulations;

“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 38(2), or, where it applies, regulation 44(1);

“beneficiary” means—

- (a) a qualifying member;
- (b) a survivor;
- (c) a surviving dependant; and
- (d) any person entitled to a payment in accordance with regulation 30(1) or 32;

“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 38;

“employment” means any trade, business, profession, office or vocation;

“entitlement period” means—

- (a) the period in respect of which the beneficiary is entitled to annual payments determined in accordance with regulation 23 or 24; or
- (b) the period in respect of which the beneficiary is entitled to payments under regulation 30, 31 or 32 determined in accordance with whichever of those regulations applies;

“indexation date” means—

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

(f) 2000 c.8.

(g) 1988 c.1.

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

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(a) the 1st January next falling after a beneficiary first becomes entitled to an annual payment or a payment under regulation 30, 31 or 32; and

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

“initial payment” means a payment made to a beneficiary in accordance with regulation 27, and any reference in these Regulations to an initial payment includes an interim ill health payment as defined in the 2005 Regulations;

“interim pension” has the meaning given in paragraph 3 of Schedule 2 as modified by paragraph 13 of that Schedule;

“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;

“normal benefit age” means the age at which a pension credit member is entitled to receive a pension by virtue of the pension credit rights which that member has (disregarding any scheme rule making special provision as to early payment of pension on grounds of ill health or otherwise);

“notional pension” means the annual rate of annuity determined in accordance with regulation 43(1)(a);

“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;

“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;

“pensionable service” has the meaning given by section 124(1) of the 1995 Act;

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

“principal employer” has the meaning given in regulation 12(6);

“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 20;

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

“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;

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(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 that period ending with the calculation date;

“relevant percentage” means the percentage of the member’s rights in the scheme which are retained by the member following the implementation of the pension sharing order;

“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;

“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);

“scheme rules” means the rules of the qualifying pension scheme;

“surviving dependant” shall be construed in accordance with regulation 22;

“survivor” shall be construed in accordance with regulation 21;

“survivor notional pension” means the annual rate of annuity determined in accordance with regulation 43(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;

“transfer notice” means the notice given under regulation 45;

“trustees or managers” shall be construed in accordance with the definition in section 124(1) of the 1995 Act;

“valuation actuary” has the meaning given in regulation 38,

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

(2) In these Regulations, “general level of prices” means, except where the revaluation percentage falls to be determined under paragraph 4(7) or (8) or 5(13) or 20 of Schedule 2, the general level of prices in Great Britain determined in such manner as the Secretary of State may from time to time decide.

(3) Where the Secretary of State makes a decision about the manner in which the general level of prices is to be determined, the Secretary of State shall publish that decision.

(4) In these Regulations, “normal retirement age” means, subject to paragraph (6), in relation to a member of an occupational pension scheme, the age specified in the rules of the scheme at which that member will normally retire.

(5) In paragraph (4) and (6), “the rules of the scheme” means the rules of the occupational pension scheme on the date on which benefits ceased to accrue to that member.

(6) Where the normal retirement age—

(a) determined in accordance with paragraph (4) is—

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

(ii) less than 60, that age shall be 60;

(b) cannot be determined in accordance with paragraph (4) from the rules of the scheme, that age shall be such age as the scheme manager shall determine having regard to the rules of the scheme and to such other information as it considers relevant.

(7) In these Regulations—

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(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.

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- (a) the date on which a person becomes a pension credit member is the date from which that person is treated as having become a member of the scheme under scheme rules; and
- (b) the date on which a person's rights become subject to a pension debit is the date on which the pension sharing order takes effect and accordingly section 29 of the Welfare Reform and Pensions Act 1999 applies.

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

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

(10) Paragraph (9) 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.

(11) Subject to paragraphs (13) and (14), 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 (“possible beneficiary”) for the purposes of—
  - (i) notifying the scheme manager of the details prescribed in regulation 17(1) and (3); or
  - (ii) receiving payments made under these Regulations,

has been notified to the scheme manager in a document signed by the beneficiary or 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 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 possible beneficiary, a person who has been appointed by the scheme manager to act as the beneficiary's or the possible beneficiary's representative for the purposes of these Regulations.

(12) If a beneficiary or a possible beneficiary appoints a person under sub-paragraph (a) of paragraph (11), 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.

(13) Subject to paragraph (14), where a beneficiary or a possible beneficiary is a child aged less than 18, the scheme manager may regard—

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(a) 1999 c. 30.  
(b) 1992 c. 4.  
(c) S.I. 2001/544.

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- (a) a parent of the child;
- (b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989<sup>(a)</sup> in relation to the child;
- (c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995<sup>(b)</sup> 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<sup>(c)</sup> in relation to the child,

as the appointed representative of that child.

(14) Where—

- (a) no person referred to in paragraph (13)(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; or
- (b) more than one person referred to in paragraph (13)(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.

(15) 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.

(16) 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 day on which 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) on such day as the rules provide that it does so; or
  - (ii) if the rules make no provision as to that day, on such day 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<sup>(d)</sup> 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 day 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 that person's determination.

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(a) 1989 c. 41.

(b) 1995 c. 36.

(c) S.I. 1995/755 (N.I.2).

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



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(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 day on which the scheme began to wind up cannot be determined, the scheme begins to be wound up on such day, 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<sup>(a)</sup> (see section 9); or
  - (ii) of an order of a court; and
- (b) the order makes provision as to the day on which the scheme is to begin to be wound up, the scheme begins to be wound up on the day specified in the order or, if none is so specified, the day 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 113 (investment of funds);
- (b) section 114 (investment principles);
- (c) section 115 (borrowing);
- (d) section 117 (administration levy);
- (e) section 119 (annual reports to Secretary of State);
- (f) section 134 (directions);
- (g) sections 135 and 136 (provisions restricting winding up, discharge of liabilities, etc and provisions regarding validation of contraventions of section 135);
- (h) section 165 (guaranteed minimum pensions);
- (i) section 168 (administration of compensation payable by the Board);
- (j) sections 190, 191, 194, 195, 197, and 202 to 204 (information gathering powers of the Board and provisions relating to disclosure of information by the Board);
- (k) section 217 (determinations of the PPF Ombudsman); and
- (l) Schedule 5 (the Board of the Pension Protection Fund).

(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 201 and 203 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;

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

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- (c) by any person for the purpose of enabling or assisting the scheme manager to exercise its functions; and
  - (d) by trustees or managers of occupational pension schemes in respect of matters relating to these Regulations.
- (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

### ADMINISTRATION OF THE FINANCIAL ASSISTANCE SCHEME

#### **Scheme manager**

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

(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.

**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 arrangements in relation to the determination of any actuarial factors to be applied by the scheme manager in making determinations under these Regulations.

#### **Maladministration**

**7.**—(1) The scheme manager must investigate and give a decision on any matter complained of in a relevant complaint.

(2) In this regulation—

(a) “relevant complaint” means a complaint by a person—

(i) who is, or might become, entitled to assistance under these Regulations; or

(ii) who was, or may have been, entitled to assistance under the 2005 Regulations at any time before the date on which these Regulations came into force,

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alleging that that person has sustained injustice in consequence of—

- (aa) maladministration in connection with any act or omission by the scheme manager or any person exercising functions on its behalf; or
  - (bb) maladministration in connection with any act or omission by the Secretary of State acting in his capacity as scheme manager of the financial assistance scheme or any person exercising functions on his behalf; and
- (b) “referring party” means—
- (i) where the relevant complaint is made by a person specified in paragraph (2)(a)(i), a person who has made a relevant complaint—
    - (aa) to whom the scheme manager has sent a summary of the decision under regulation 9 of the Pension Protection Fund (Maladministration) Regulations 2005<sup>(a)</sup> (“the Maladministration Regulations”) or regulation 9 of the Pension Protection Fund (Maladministration) Regulations (Northern Ireland) 2005<sup>(b)</sup> (“the NI Maladministration Regulations”); or
    - (bb) to whom the Investigation Committee has sent a summary of the decision under regulation 17 of the Maladministration Regulations or regulation 17 of the NI Maladministration Regulations; or
  - (ii) where the relevant complaint is made by a person specified in paragraph (2)(a)(ii), a person who has made a relevant complaint to whom the Independent Case Examiner for the Department for Work and Pensions has sent a decision.

(3) Subject to paragraphs (4), (5) and (6), where a person wishes to make, or has made, a relevant complaint, the procedure to be followed in relation to the making of that complaint and its investigation and determination is the procedure set out in regulations 3 to 19 of the Maladministration Regulations or regulations 3 to 19 of the NI Maladministration Regulations.

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

- (a) any references in the Maladministration Regulations to provisions of the Act are to be read as references to those provisions as modified by Schedule 1 to these Regulations;
- (b) any reference to a relevant complaint is to be read as a reference to a “relevant complaint” as defined in this regulation; and
- (c) any reference to a decision under regulation 2 of those Regulations is to be read as a reference to a decision under regulation 7(1) of these Regulations.

(5) Where the act or omission which is the subject of a relevant complaint occurred before the date on which these Regulations came into force a person may make that complaint at any time.

(6) Where the relevant complaint was made by a person specified in paragraph (2)(a)(ii)—

- (a) before the date on which these Regulations came into force; and
- (b) that person had not applied to the Independent Case Examiner for a decision before that date,

that person may make an application to the Investigation Committee under regulation 10 of the Maladministration Regulations at any time.

(7) A referring party may, following—

- (a) where the relevant complaint is made by a person specified in paragraph (2)(a)(i)—
  - (i) a decision by the Investigation Committee on the matters complained of; or
  - (ii) the expiry of the time within which the complaint should have been investigated and determined by the Investigation Committee; or
- (b) where the relevant complaint is made by a person specified in paragraph (2)(a)(ii), a decision of the Independent Case Examiner,

refer the matter to the Ombudsman.

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(a) S.I. 2005/650.

(b) S.R. 2005 No. 128.

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- (8) Where a person wishes to refer a matter to the Ombudsman under paragraph (7)—
- (a) where the relevant complaint was made by a person specified in paragraph (2)(a)(i), that person must do so within the period of 28 days beginning with—
    - (i) the day on which the decision was sent to the referring party; or
    - (ii) where no decision has been made, the day immediately after the last day of the period within which the complaint should have been investigated and a decision given; or
  - (b) where the relevant complaint was made by a person specified in paragraph (2)(a)(ii), that person must do so within the period of 12 months beginning with the date on which the decision of the Independent Case Examiner was sent to the referring party.

(9) Subject to paragraph (10), where a person wishes to refer, or has referred, a matter to the Ombudsman under this regulation, the procedure to be followed in relation to the making of that referral and its investigation and determination by the Ombudsman is the procedure set out in—

- (a) regulations 4 to 20 of the Pension Protection Fund (Investigation by PPF Ombudsman of Complaints of Maladministration) Regulations 2005(a) (“the PPF Ombudsman Regulations”); or
- (b) regulations 4 to 20 of the Pension Protection Fund (Investigation by PPF Ombudsman of Complaints of Maladministration) Regulations (Northern Ireland) 2005(b) (“the PPF Ombudsman NI Regulations”).

(10) For the purposes of paragraph (9)—

- (a) any references in the PPF Ombudsman Regulations or the PPF Ombudsman NI Regulations to provisions of the Act are to be read as references to those provisions as modified by Schedule 1 to these Regulations;
- (b) any reference in the PPF Ombudsman Regulations or the PPF Ombudsman NI Regulations to a referable matter or a reference under regulation 2 of the PPF Ombudsman Regulations or regulation 2 of the PPF Ombudsman NI Regulations is to be read as a reference to a reference under paragraph (7); and
- (c) any reference in regulation 16 of the PPF Ombudsman Regulations or regulation 16 of the PPF Ombudsman NI Regulations to a person within regulation 2(2)(a) or (b) of the PPF Ombudsman Regulations or regulation 2(2)(a) or (b) of the PPF Ombudsman NI Regulations is to be read as a reference to the person who has referred the matter to the Ombudsman under paragraph (7).

(11) Where, prior to the coming into force of this regulation, a person has referred a complaint of maladministration by—

- (a) the scheme manager; or
- (b) the Secretary of State acting in his capacity as scheme manager;

to the Parliamentary Commissioner and the complaint has not been determined, the Parliamentary Commissioner may continue to investigate and determine the complaint and, where the Parliamentary Commissioner does so, paragraphs (1) to (10) shall not apply in relation to the complaint.

(12) Information held by the Ombudsman for the purposes of any of its functions relating to the financial assistance scheme may be disclosed to the Parliamentary Commissioner or the Secretary of State for any use connected with, or incidental to—

- (a) the exercise of the Ombudsman’s functions in relation to the financial assistance scheme; or
- (b) the exercise of the Parliamentary Commissioner’s or the Secretary of State’s functions in so far as they relate to the investigation of complaints relating to the financial assistance scheme.

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(a) S.I.2005/2025.

(b) S.R. 2005 No. 343.

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(13) Information held by the Parliamentary Commissioner or the Secretary of State for the purposes of any of its functions in respect of the investigation of complaints relating to the financial assistance scheme may be disclosed to the Ombudsman for any use connected with, or incidental to,

- (a) the exercise of the Parliamentary Commissioner's or the Secretary of State's functions in so far as they relate to the investigation of complaints relating to the financial assistance scheme; or
- (b) the exercise of the Ombudsman's functions in relation to the financial assistance scheme.

(14) For the purposes of paragraphs (12) and (13), references to the Secretary of State apply only in relation to the Secretary of State as scheme manager under regulation 5(1) of the 2005 Regulations before the amendment made to that regulation by regulation 6(1)(a) of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2009(a).

### Use of information

**8.**—(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—

- (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.

## 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) except where paragraph (3) or (5) applies, the scheme began to wind up during the period beginning on 1st January 1997 and ending on 5th April 2005;
- (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;

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(a) S.I. 2009/1851.

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- (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 13(1) is satisfied;
  - (iv) in relation to a multi-employer scheme which began to wind up before 6th April 1997, the condition in regulation 14(1) or (2) is satisfied;
  - (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 13(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 14(3) or (4) is satisfied;
- (d) 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 those paragraphs is satisfied; and
- (e) the details prescribed in regulation 17 have been notified to the scheme manager by a person, in the form and manner and before the date prescribed in that regulation.

(2) The relevant link mentioned in paragraph (1)(d) 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.

(3) 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) 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(a) or Article 111(b) (duty to assume responsibility for schemes following insolvency event) if the scheme were an eligible scheme.

(4) In paragraph (3)—

“eligible scheme” has the meaning given in section 126(c) or, as the case may be, Article 110(d) (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.

(5) This paragraph applies where—

- (a) the scheme began to wind up during the period beginning on 23rd December 2008 and ending on the day before these Regulations 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; and
- (c) the relevant employer ceased to be an employer in relation to the scheme prior to 10th June 2011.

(6) In paragraph (5), “relevant employer” means 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.

(7) Where a scheme is a qualifying pension scheme for the purposes of these Regulations by virtue of paragraph (5), that scheme is not an eligible scheme for the purposes of section 126(1)(b)

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- (a) 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).
  - (b) 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).
  - (c) Section 126 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).
  - (d) 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).

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of the Pensions Act 2004 or Article 110(1)(b) of the Pensions (Northern Ireland) Order 2005<sup>(a)</sup> (eligible schemes).

(8) 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<sup>(b)</sup> (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<sup>(c)</sup> or under Article 9 of the Superannuation (Northern Ireland) Order 1972<sup>(d)</sup> (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<sup>(e)</sup> (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<sup>(f)</sup> (pensions of members), or which was established under Part 2 of the Ministerial Salaries and Members’ Pensions Act (Northern Ireland) 1965<sup>(g)</sup> or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976<sup>(h)</sup>;
- (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<sup>(i)</sup> (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;
  - (ii) which is not contracted-out in accordance with section 9 of the 1993 Act<sup>(j)</sup>; 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;

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(a) S.I. 2005/255 (N.I.1).

(b) 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.

(c) 1972 c. 11.

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

(e) 1987 c. 45.

(f) 1987 c. 45. (g) 1998 c. 47.

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

(h) S.I. 1976/1779.

(i) 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.

(j) 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.

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- (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(a) (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;
- (l) 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(b) 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.

### Condition to be satisfied by employer

**11.**—(1) The condition to be satisfied by the employer for the purposes of 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.

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

- (a) 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, 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.

### 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 regulation 9(1)(c)(ii) is that an insolvency event has occurred—

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- (a) 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.
  - (b) (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.



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- (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.
- (2) The references to the employer (other than in the phrase “principal employer”) in paragraph (1)—
- (a) 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.
- (3) In relation to a multi-employer scheme which is not a sectionalised multiemployer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(ii) is that an insolvency event has occurred—
- (a) in relation to the principal employer; or
  - (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.
- (4) The references to the employer (other than in the phrase “principal employer”) in paragraph (3)—
- (a) 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.
- (5) The references to the principal employer (who may or may not be an employer within the meaning of paragraph (2) or (4)) in paragraphs (1) and (3) are to 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 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

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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.

### **Employer-related condition**

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

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

**14.**—(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) 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).

### **Scheme manager discretion in relation to conditions in regulations 13 and 14**

**15.** The scheme manager may treat any of the conditions in regulations 13(1) and (2) and 14(1) to (4) as being satisfied where—

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- (a) it is satisfied that an appropriate proportion of the debt was discharged or is likely to be discharged; and
- (b) in 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

### Insolvency events

**16.**—(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 that employer was unlikely to continue as a going concern.

(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
  - (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.

(4) 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 it is satisfied that 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.

(5) An insolvency event also occurs for the purposes of regulations 11 and 12 where any of the following events occur—

- (a) in relation to a company—
  - (i) where an administration order is made—

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(a) 1993 c. 10.  
(b) 1964 c. 33 (N.I.).  
(c) 1992 c. 52.  
(d) S.I. 1992/807 (N.I. 5).

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- (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(a) or Article 603 or 603A of the Companies (Northern Ireland) Order 1986(b);
- (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
    - (bb) in Article 105(3)(c) (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(d) or Article 603 or 603A of the Companies (Northern Ireland) Order 1986(e);
- (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(f) (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(g) (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(h) or section 67 of the Industrial and Provident Societies Act (Northern Ireland) 1969(i) (instrument of dissolution).
- (6) An insolvency event also occurs for the purposes of regulations 11 and 12 where the scheme manager is satisfied that—
- (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) (other than subsection (3)(f) of that section),

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(a) 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.

(b) 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.

(c) See also Article 105(12).

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

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

(f) 1986 c. 53.

(g) 1992 c. 40.

(h) 1965 c. 12.

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

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- (ii) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article), and
- (iii) paragraph (5) of this regulation; and

(b) that employer is unlikely to continue as a going concern.

(7) 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.

(8) 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 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).

(9) 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;

“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);

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(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).

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- (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(a).

### Notification of details

**17.**—(1) Where an occupational pension scheme is winding up, the prescribed details for the purposes of regulation 9(1)(e) 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(b);
- (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)(e) 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 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.

(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 it may accept notification of those details in the case of any particular scheme.

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(a) 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).

(b) 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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## Working with qualifying pension schemes

**18.**—(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
- (d) the inspection, examination and auditing of data or other information relating to qualifying pension schemes.

## Payments in relation to administration or other costs

**19.**—(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, SURVIVORS AND SURVIVING DEPENDANTS

#### Qualifying members

**20.**—(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 (4) 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 the 2005 Regulations.

(2) The condition in this paragraph is that the member or former member must have either—

- (a) an accrued right to a benefit under the scheme; or
- (b) a right to a benefit under the scheme attributable (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(b) (creation of pension debits and credits).

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(a) Section 286A was inserted by section 125(1) of the Pensions Act 2008 (c.30).  
(b) 1999 c.30.

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- (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.
- (4) The condition in this paragraph is that the scheme’s pension liabilities have not been satisfied in full in respect of that member.
- (5) 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) that person was entitled to a present payment from a qualifying pension scheme immediately before the scheme began to wind up;
  - (b) that payment was attributable to the pensionable service of a former member of that scheme who has died; and
  - (c) the scheme’s pension liabilities in respect of that person have not been satisfied in full.

### Survivors

- 21.—(1) Subject to paragraph (4), a person is a survivor of a qualifying member if—
- (a) the qualifying member has died;
  - (b) the qualifying member was not a qualifying member by virtue of regulation 20(5); and
  - (c) either—
    - (i) where paragraph (2) does not apply, the person is the qualifying member’s widow, widower or surviving civil partner; or
    - (ii) where paragraph (2) applies, the person is the qualifying member’s surviving partner.
- (2) This paragraph applies where—
- (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 for a survivor’s pension to be paid 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.
- (3) For the purposes of enabling the scheme manager to be satisfied or not satisfied that the conditions in paragraphs (2)(c) and (d)(ii) or (iii) are met, the surviving partner must provide evidence that those conditions are met to the scheme manager.
- (4) Where a person is regarded as a qualifying member by virtue of regulation 20(5), that person is not a survivor of the former member referred to in regulation 20(5)(b).



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## Surviving dependants

- 22.**—(1) Subject to paragraph (2), a person is a surviving dependant of a qualifying member if—
- (a) the qualifying member has died;
  - (b) the qualifying member was not a qualifying member by virtue of regulation 20(5);
  - (c) the person is a child who 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
      - (bb) incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995<sup>(a)</sup>; and
  - (d) 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 20(5) that person is not a survivor of the former member referred to in regulation 20(5)(b).

## PART 5

### ASSISTANCE PAYMENTS

#### Annual payments: qualifying members

- 23.**—(1) A qualifying member is entitled to annual payments in respect of the period from the date determined in accordance with paragraph (2) until the date determined in accordance with paragraph (4).
- (2) Subject to paragraph (3), the period referred to in paragraph (1) begins on—
- (a) where none of sub-paragraphs (b) to (g) applies, the day on which the qualifying member attains normal retirement age;
  - (b) in the case of a person who is a qualifying member by virtue of regulation 20(5), the day on which the qualifying member became entitled to a payment from the scheme;
  - (c) in the case of a pension credit member, the later of—
    - (i) the day on which the member attained normal benefit age; and
    - (ii) the day on which the member became a pension credit member of the scheme;
  - (d) where paragraph (6) applies, the day on which scheme manager receives notification in accordance with the relevant paragraph;
  - (e) where paragraph (7) applies, the later of—
    - (i) the day on which the scheme manager receives the written request in accordance with paragraph (7)(a); and
    - (ii) the day on which all the conditions in paragraph (7)(b) are met;
  - (f) where paragraph (8) applies, the latest of—

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(a) 1995 c. 50. As amended, in relation to Northern Ireland, by S.I. 2005/1117.

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- (i) the day on which the scheme manager receives notification in accordance with paragraph (8);
  - (ii) the day on which the qualifying member attains the age which is 5 years less than normal retirement age; and
  - (iii) 17th July 2008; and
- (g) where paragraph (9) applies—
- (i) subject to paragraph (ii), the day on which the scheme manager received the written request; or
  - (ii) where the scheme manager is satisfied that the conditions in paragraph (9)(b) were met before receipt of the written request, the later of—
    - (aa) the day on which the conditions would have been met; and
    - (bb) the day on which the qualifying member became a pension credit member of the scheme.
- (3) If the day determined in accordance with paragraph (2) falls before 14th May 2004, the period referred to in paragraph (1) begins on 14th May 2004.
- (4) The period referred to in paragraph (1) ends on the earlier of—
- (a) the day on which the qualifying member dies;
  - (b) the day on which entitlement ceases under paragraph (11), where it applies; and
  - (c) the day on which entitlement would have ended in accordance with the scheme rules.
- (5) Where the date referred to in paragraph (4)(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 it considers relevant.
- (6) This paragraph applies where the scheme manager—
- (a) receives notification that the qualifying member is terminally ill; and
  - (b) is satisfied that the qualifying member is—
    - (i) terminally ill; and
    - (ii) not otherwise entitled to payments under these Regulations as a qualifying member of the qualifying scheme.
- (7) This paragraph applies where—
- (a) the qualifying member, or a person acting on the qualifying member's behalf, has made a written request for an annual payment; and
  - (b) the scheme manager is satisfied that the qualifying member—
    - (i) is not otherwise entitled to payments under these Regulations as a qualifying member of the qualifying scheme;
    - (ii) has attained the age of 55;
    - (iii) suffers from a progressive disease as a result of which the qualifying member—
      - (aa) cannot reasonably be expected to die within 6 months; and
      - (bb) can reasonably be expected to die within 5 years; and
    - (iv) is unable to work due to ill health and likely to continue to be so unable to work until normal retirement age.
- (8) This paragraph applies where the scheme manager—
- (a) receives notification 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 satisfied that the qualifying member—
    - (i) is not otherwise entitled to an annual payment as a qualifying member of the qualifying scheme under these Regulations; and

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- (ii) is unable to work due to ill health and likely to continue to be so unable to work until normal retirement age; and
  - (c) receives confirmation that the qualifying member wishes annual payments to be made prior to normal retirement age on the basis of ill health.
- (9) This paragraph applies where—
  - (a) the qualifying member makes a written request for an annual payment between 27 March 2009 and 26 March 2010;
  - (b) the scheme manager is satisfied that the qualifying member—
    - (i) has attained the age of 55
    - (ii) suffers from a progressive disease and, as a result, can reasonably be expected to die within 5 years;
    - (iii) is unable to work due to ill health and likely to continue to be so unable to work until normal retirement age; and
    - (iv) is not regarded as a qualifying member of the qualifying scheme by virtue of regulation 20(5).
- (10) In determining whether or not the scheme manager is satisfied in accordance with paragraph (9)(b), 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 (9);
  - (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
    - (iii) such other matters as the scheme manager considers relevant.
- (11) Where, on 27th March 2009, a qualifying member to whom paragraph (9) applies is already receiving a payment under this regulation, that entitlement shall cease from the date on which the scheme manager determines that the qualifying member is entitled to an annual payment in accordance with paragraph (9).
- (12) 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 (9)(b); and
  - (c) the relevant representative makes a written request in respect of that qualifying member during the time period set out in paragraph (9)(a);that qualifying member shall be entitled to an annual payment in accordance with this regulation, and that annual payment (or initial payment under regulation 27) is payable to the estate of the deceased qualifying member.
- (13) For the purposes of this regulation—
  - “relevant representative” means—
    - (a) the survivor of the deceased qualifying member referred to in paragraph (12), 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.

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### **Annual payments: survivors and surviving dependants**

**24.**—(1) A survivor of a qualifying member is entitled to annual payments in respect of the period which runs from the later of—

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

until the day on which the survivor dies.

(2) A surviving dependant of a qualifying member is entitled to annual payments in respect of the period which runs from the latest of—

- (a) the day after the day on which the qualifying member died;
- (b) the day on which the surviving dependant was born; and
- (c) 14th May 2004,

until the day determined in accordance with paragraph (3).

(3) For the purposes of paragraph (2), the day on which the period ends is—

- (a) where neither sub-paragraph (b) nor (c) applies, the day on which the surviving dependant attains the age of 18;
- (b) where the surviving dependant is attending a qualifying course, the day on which the surviving dependant—
  - (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, the day on which the surviving dependant attains the age of 23.

(4) Where an annual payment ceases to be payable to a surviving dependant as a result of paragraph (3)(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 in respect of the period which runs from the day on which the scheme manager is satisfied that the surviving dependant satisfies sub-paragraph (a) or (b) until the day subsequently determined in accordance with paragraph (3).

### **Calculation of annual payments**

**25.**—(1) 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 including provision for a cap to be imposed on such amounts.

(2) Subject to paragraphs (3) and (5), where a person is entitled to an annual payment it shall be calculated in accordance with Schedule 2.

(3) Where paragraph (4) applies, the annual payment shall be calculated in accordance with Schedule 3.

(4) This paragraph applies where—

- (a) a transfer notice has been given to the trustees or managers of the qualifying pension scheme;
- (b) neither the beneficiary, nor (where the beneficiary is a survivor or surviving dependant) the qualifying member in respect of the beneficiary, was in receipt of a present payment from the qualifying scheme on 1st April 2010; and
- (c) either—

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- (i) the—
    - (aa) beneficiary was entitled to an annual payment on the day on which the transfer notice was given; and
    - (bb) the annual payment calculated under Schedule 3 as at the date on which the transfer notice was given is higher than the amount that would be payable under Schedule 2 if that Schedule applied; or
  - (ii) the—
    - (aa) beneficiary was not entitled to an annual payment on the day on which the transfer notice was given; and
    - (bb) the annual payment calculated under Schedule 3 as at the date on which the beneficiary became entitled to an annual payment is higher than the amount that would be payable under Schedule 2 if that Schedule applied.
- (5) Where paragraph (6) applies, the annual payment shall be calculated in accordance with Schedule 4.
- (6) This paragraph applies where—
- (a) a transfer notice has been given to the trustees or managers of the qualifying pension scheme;
  - (b) the beneficiary, or (where the beneficiary is a survivor or surviving dependant) the qualifying member in respect of the beneficiary, was in receipt of a present payment from the qualifying scheme on 1st April 2010;
  - (c) either—
    - (i) the—
      - (aa) beneficiary was entitled to an annual payment on the day on which the transfer notice was given; and
      - (bb) the annual payment calculated under Schedule 4 as at the date on which the transfer notice was given is higher than the amount that would be payable under Schedule 2 if that Schedule applied; or
    - (ii) the—
      - (aa) beneficiary was not entitled to an annual payment on the day on which the transfer notice was given; and
      - (bb) the annual payment calculated under Schedule 4 as at the date on which the beneficiary became entitled to an annual payment is higher than the amount that would be payable under Schedule 2 if that Schedule applied; and
  - (d) there has been no redetermination under regulation 26.
- (7) For the purposes of paragraphs (4) and (6)—
- (a) a qualifying member is treated as receiving a present payment from a pension scheme on 1st April 2010, notwithstanding that no payment has been received, if, prior to 2nd April 2010—
    - (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.
  - (b) a survivor or surviving dependant is treated as receiving a present payment from a pension scheme on 1st April 2010, notwithstanding that no payment has been received, if, on that date, the beneficiary was entitled to ongoing payments as a result of the death of the qualifying member.
- (8) In any case where it is not possible for the scheme manager to determine from the available information one or more of the elements necessary to calculate the amount of an annual payment

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or annual increase under Schedule 2, the scheme manager shall determine that element or, as the case may be, those elements, having regard to such matters as it considers relevant.

(9) Section 286(1A) of the Act and section 18(5) of the Pensions Act 2007 do not apply in cases where—

- (a) the qualifying member is someone to whom regulation 23(8) applies; or
- (b) the qualifying member has chosen to commute the annual payment under regulation 29.

(10) Section 18(6) of the Pensions Act 2007 does not apply in cases where the survivor is—

- (a) the survivor of a qualifying member to whom regulation 23(8) applies; or
- (b) the survivor of a qualifying member who was a party to a polygamous marriage.

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

**26.**—(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 annual payment determined in accordance with Schedule 4 is lower than the annual payment that would be determined in accordance with Schedule 2 if that Schedule applied.

(2) 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.

### **Initial payments**

**27.**—(1) The scheme manager may, in its discretion, make a payment (“an initial payment”) to a qualifying member, a survivor or surviving dependant—

- (a) in anticipation of an annual payment being payable to that beneficiary under this Part and on account of such a payment; and
- (b) before any instalment of that annual payment is made.

(2) Schedule 2 makes provision for the determination of the amount of initial payments.

(3) An initial payment under paragraph (1) may be made with effect from the day on which the entitlement period begins.

(4) In exercising its discretion under paragraph (1), 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 the qualifying member up until the qualifying member’s death; or
  - (ii) after the qualifying member’s death, to the qualifying member’s survivor or surviving dependants; 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.

(5) Where the trustees or managers have determined the amount of interim pension that would be paid to the beneficiary, but do not propose to pay that interim pension for administrative reasons, the scheme manager may, in exercising its discretion under paragraph (1) and in determining the amount of initial payment under Schedule 2, deem that beneficiary to be receiving that interim pension, if in the scheme manager’s opinion it is reasonable to do so.

(6) If the scheme manager determines that an initial payment may be made under paragraph (1), the initial payment is payable until the earlier of—

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- (a) the day on which the entitlement period ends; and
- (b) the day on which the first instalment of an annual payment would have been paid or is paid in accordance with regulation 35, if an annual payment were payable, or is payable, to the beneficiary under this Part.

(7) 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.

(8) 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 (1) if it is satisfied that the amount being paid by way of initial payment, as determined in accordance with Schedule 2, may be incorrect.

(9) The power to redetermine the amount of an initial payment under paragraph (8) includes the power to redetermine that amount as a result of a change in the amount of interim pension being paid to the beneficiary.

(10) If, having determined that an initial payment may be made to a person under paragraph (1), the scheme manager subsequently determines, in accordance with Schedule 2, that no annual payment is payable to or in respect of that person, the total of all instalments of an initial payment made to or in respect of that person is recoverable in accordance with regulation 7 of the FAS Information and Payments Regulations.

### **Administration of annual payments**

**28.**—(1) The year in respect of which the annual payment is to be made shall be the year starting on the day on which 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 35 and in respect of subsequent years, on each anniversary of that day.

(2) In determining the amount of annual payment that is payable to, or in respect of, a beneficiary entitled to an annual payment in accordance with Schedule 2 for any previous year or years (“arrear payable”)—

- (a) the total of all 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 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).

(3) 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.

(4) Paragraph 11 of Schedule 2 provides for the circumstances in which an annual payment is not payable under this Part.

### **Commutation of an annual payment**

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

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- (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 20(5);
- (d) has not received any payment under scheme rules in respect of the qualifying member's pension 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 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
  - (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 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 paragraph 1(2) of Schedule 2.

(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 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 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.

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

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

- (a) a notional pension has been determined in accordance with regulation 43 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 regulation 45; 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 yearly payments determined in accordance with Schedule 5 in respect of the period beginning on the day on which the transfer notice in respect of the qualifying pension scheme is given and ending on the day on which entitlement to a payment from the scheme would have ended in accordance with scheme rules.



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(3) The year in respect of which a 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 35 and in respect of subsequent years, on each anniversary of that day.

(4) Where a person ceases to be entitled to a payment under this regulation—

- (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**

**31.**—(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; 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 yearly payments determined in accordance with Schedule 5 in respect of the period beginning on the day on which the transfer notice in respect of the qualifying pension scheme is given and ending on the earlier of—

- (a) the day before the day on which the qualifying member becomes entitled to an annual payment; and
- (b) the day on which the qualifying member dies.

(3) The year in respect of which a 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 35 and in respect of subsequent years, on each anniversary of that day.

(4) Where the qualifying member ceases to be entitled to a payment under this regulation—

- (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, 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.

### **Payments to surviving dependants after the age of 23**

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

- (a) a transfer notice has been given in respect of the qualifying pension scheme;
- (b) under the scheme rules, the pension payable to the beneficiary would be payable for life;
- (c) the beneficiary was receiving present payment from the scheme in respect of the pension at the calculation date; and
- (d) the beneficiary was a surviving dependant who was under the age of 23 on the calculation date.

(2) Where this regulation applies, the beneficiary shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 5.

(3) A person entitled to a payment under paragraph (2) shall be entitled to that payment in respect of the period which runs from the later of—

- (a) the day on which entitlement to an annual payment under Schedule 2, 3 or 4 ceases; and

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(b) the day on which the transfer notice is given,  
until the day on which the beneficiary 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 person by virtue of regulation 35 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 shall be payable.

### **Death benefit guarantees**

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

- (a) a qualifying member was entitled to a yearly payment determined in accordance with Schedule 5;
- (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
- (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.

### **Payments to beneficiaries who received a first instalment of an annual payment between 10 July 2009 and 31 July 2009**

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

- (a) a beneficiary received their first instalment of an annual payment or ill health payment under the 2005 Regulations between 10th July 2009 and 31st July 2009; and
- (b) the beneficiary would have been entitled to a higher annual payment or ill health payment under the 2005 Regulations immediately prior to their amendment by the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009(a).

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(a) S.I. 2009/1851

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- (2) Where this regulation applies, the beneficiary shall be entitled to—
- (a) a payment calculated in respect of each year to which the annual payment relates which falls in the period determined in accordance with paragraph (6); and
  - (b) where the period determined in accordance with paragraph (6) ends on the day before these Regulations come into force, a payment in respect of each year to which the annual payment relates from the day on which these Regulations come into force until the day determined in accordance with paragraph (7).
- (3) Subject to paragraph (4), the payments referred to in paragraph (2) shall be calculated in accordance with paragraphs (5) and (8).

(4) Where the period determined in accordance with paragraph (6), or paragraphs (2)(b) and (8) as the case may be, is or includes a period (“the pro-rated period”) in respect of an annual payment which is not a complete year, the beneficiary shall be entitled to one twelfth of the amount determined in accordance with paragraph (5) or paragraph (7) for each full month in the pro-rated period.

(5) The payment to which the beneficiary is entitled under paragraph (2)(a) is to be calculated in respect of each year which falls in the period determined in accordance with paragraph (6) according to the formula—

$$A - B - C ,$$

where—

“A” is the amount of the annual payment to which the beneficiary would have been entitled under the 2005 Regulations prior to their amendment by the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009;

“B” is the amount of the annual payment to which the beneficiary was entitled in respect of the period determined in accordance with paragraph (6) under the 2005 Regulations;

“C” is the amount of any payment received from the Secretary of State, in respect of the period determined in accordance with paragraph (6), pending the making and coming into force of this regulation.

(6) The period in respect of which the payment under paragraph (2)(a) is to be calculated begins on the day on which the beneficiary received the first instalment of the annual payment or ill health payment and ends on the earlier of—

- (a) the indexation date on which the annual payment or ill health payment calculated in accordance with the 2005 Regulations was higher than the annual payment or ill health payment to which the beneficiary would have been entitled under the 2005 Regulations prior to their amendment by the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009;
- (b) the date on which the beneficiary stopped being entitled to an annual payment; and
- (c) the day before the day on which these Regulations come into force.

(7) The payment to which the beneficiary is entitled under paragraph (2)(b) is—

$$X - Y ,$$

where—

“X” is the amount of the annual payment to which the beneficiary would have been entitled under the 2005 Regulations prior their amendment by the FAS (Miscellaneous Provisions) Regulations 2009; and

“Y” is the amount of the annual payment to which the beneficiary is entitled under these Regulations.

(8) The period in respect of which the payment referred to in paragraph (2)(b) ends is the day on which the product of the calculation in paragraph (7) is zero or less.

(9) The scheme manager may make the payment referred to in paragraph (2)(b) in instalments of no more than 52 in a year.

## PART 6

### ADMINISTRATION OF PAYMENTS

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

**35.**—(1) The scheme manager shall pay the annual payment, a payment under regulation 30, 31 or 32, or an initial payment to the beneficiary or to the beneficiary's appointed representative, 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 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 instalments 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 or payment under regulation 30, 31 or 32; or
- (b) the scheme manager determines that an initial payment may be made under regulation 27.

(4) Payments under these Regulations 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**

**36.**—(1) Subject to paragraphs (3) and (4), payments under these Regulations may, by an arrangement between the scheme manager and the beneficiary or the beneficiary's appointed representative, be paid by way of direct credit transfer into a bank or other account—

- (a) in the name of the beneficiary, the beneficiary's 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.

(2) Instalments shall be paid in accordance with paragraph (1) within seven days of the day on which each instalment is payable under regulation 35(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 it to be appropriate to do so.

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

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

(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.

## PART 7

### Valuation of assets and liabilities

#### **Application of this Part**

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

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- (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);
    - (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); or
    - (vi) payment of a lump sum in respect of members' rights.
- (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.
- (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**

**38.**—(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

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(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).

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(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, persons 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 Institute and Faculty of Actuaries; or

(bb) 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 regulation 45 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 19; 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—

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- (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

39.—(1) This regulation is subject to regulation 40.

(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

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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**

**40.**—(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**

**41.**—(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**

**42.**—(1) A valuation obtained under regulation 38 is not binding until—

- (a) it is approved under regulation 41;
- (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 42 of the Financial Assistance Scheme Regulations 2011;



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- (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**

**43.**—(1) Subject to paragraph (2), where a valuation has been obtained in accordance with regulation 38, 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) or (6), if purchased on the calculation date with the asset share determined in accordance with regulation 38(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;
    - (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 20(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 38(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 payable to each survivor and surviving dependant of that qualifying member from the day determined in accordance with paragraph (3)(e) until the day determined in accordance with paragraph (5) or (6), if purchased on the calculation date with the asset share determined in accordance with regulation 38(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 38(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—

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- (a) where the notional pension is in respect of a qualifying member who has not died before the calculation date and who, on the calculation date, is neither entitled to an annual payment nor receiving a present payment from the scheme, the day on which the qualifying member attains normal retirement age, or in the case of a pension credit member, normal benefit age;
- (b) where the notional pension is in respect of a qualifying member who is not a qualifying member by virtue of regulation 20(5) and who is, on the calculation date, dead or entitled to an annual 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; and
  - (ii) either—
    - (aa) where neither sub-paragraph (bb) nor (cc) applies, the first day of the entitlement period; or
    - (bb) where the qualifying member is entitled to an annual payment by virtue of regulation 23(6), (7) or (9), the day on which the qualifying member attains normal retirement age, or, in the case of a pension credit member, normal benefit age; or
    - (cc) where the qualifying member attains normal retirement age, or in the case of a pension credit member, normal benefit age before 14th May 2004, the day on which the qualifying member attains that age;
- (c) where the notional pension is in respect of a qualifying member who is a qualifying member by virtue of regulation 20(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 or survivor notional pension ceases to be payable for the purposes of paragraph (1)(a) and (c) is the day on which entitlement to a payment would end in accordance with these Regulations.

(6) Where a notional pension is calculated for a beneficiary who died prior to becoming entitled to a payment in accordance with these Regulations (or any Regulations which they replaced), the day on which the notional pension ceases to be payable is the day on which the beneficiary died.

(7) The scheme manager shall make the determination in paragraph (1) by applying the asset share towards satisfying the amounts mentioned in paragraph (8) and—

- (a) if sub-paragraph (a) or (b) of paragraph (8) 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.

(8) The amounts referred to in paragraph (7) 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 2nd April 2010(a)—

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(a) The 2nd April 2010 is the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 (S.I. 2010/1149) came into force.

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- (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 2nd April 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).
- (9) In determining the amounts mentioned in paragraph (8)(c)(ii), the scheme manager shall have regard to the benefits that would be payable to any survivor or surviving dependant under Schedule 3.
- (10) 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 (11) and—
- (a) if sub-paragraph (a) of paragraph (11) 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.
- (11) The amounts referred to in paragraph (10) 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 2nd April 2010—
    - (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 2nd April 2010, the annuity which could be purchased, including annual increases for the survivor or surviving dependant.
- (12) In paragraphs (8)(a)(i) and (11)(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—

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- (i) subject to paragraph (ii) in accordance with scheme rules; or
  - (ii) where the scheme rules provide for the trustees or managers to exercise discretion in determining the amount to which the survivor or surviving dependant is entitled and such discretion has not been exercised as at the calculation date, in accordance with Schedule 3;
  - (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.
- (13) Where, under the scheme rules—
- (a) an amount is payable to a beneficiary for a period which—
    - (i) is shorter than the period in respect of which the remainder of the pension is payable; and
    - (ii) has not expired as at the calculation date; and
  - (b) the beneficiary was receiving a present payment from the qualifying pension scheme before 2nd April 2010 calculated on the basis that the amount referred to in subparagraph (a) would be paid for the shorter period,
- the scheme manager shall calculate the notional pension on the basis that it will include the amount payable for the shorter period for the duration of that period only.
- (14) Where a beneficiary's rights in the scheme have become subject to a pension debit after the date determined in accordance with paragraph (3) or (4), the scheme manager shall calculate the notional pension on the basis that the member is entitled to a higher annual rate of annuity prior to the application of the pension debit.
- (15) 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 payments are increased under—
- (a) paragraph 7 of Schedule 3, where paragraph (8)(c) or (11)(b) applies;
  - (b) paragraph 7 of Schedule 4, where paragraph (8)(a) or (11)(a) applies; and
  - (c) paragraph 5 of Schedule 5, where paragraph (8)(b) applies.
- (16) For the purposes of this regulation—
- (a) a qualifying member is treated as receiving a present payment from a pension scheme before the 2nd April 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 2nd April 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.
- (17) In this regulation, references to pension and other benefits to which a beneficiary is entitled are to pension and other benefits in respect of which the asset share has been calculated and do not include any liabilities which are to be, or have been, discharged under regulation 45 or other than as a result of the transfer notice being given.
- (18) This regulation is subject to regulation 44.

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

**44.**—(1) Where regulation 38(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 43(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, after the calculation date and before the day on which the transfer notice is given—

- (a) a qualifying member commutes a portion of their pension from the qualifying scheme for a lump sum;
- (b) a qualifying member, prior to attaining normal retirement age or becoming entitled to an annual payment by virtue of regulation 23(8), begins to receive a present payment from the qualifying scheme;
- (c) a qualifying member, becomes entitled to an annual payment by virtue of regulation 23(8) prior to receiving a present payment from the scheme; or
- (d) a qualifying member's rights in the scheme have become subject to a pension debit.

(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) or (c) applies—
  - (i) the qualifying member's normal retirement age;
  - (ii) the date on which the qualifying member began to receive a present payment from the scheme; and
  - (iii) the date on which the qualifying member became entitled to an annual payment by virtue of regulation 23(8), where that regulation applies;
- (c) where paragraph (3)(d) applies, the terms of the pension sharing order; and
- (d) such other matters as the scheme manager considers relevant.

(5) Paragraph (6) applies in any case where—

- (a) the conditions specified in regulation 32(b) to (d) apply; and
- (b) a survivor notional pension has been determined for the surviving dependant prior to the coming into force of that regulation.

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

- (a) the surviving dependant's asset share;
- (b) any payments made by the scheme prior to transfer; and
- (c) the period over which the scheme manager expects the surviving dependant to be entitled to a payment under these Regulations.

## PART 9

### TRANSFER OF PROPERTY, RIGHTS AND LIABILITIES

#### **Transfer of property, rights and liabilities**

**45.**—(1) Where a valuation has become binding under regulation 42 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").

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- (2) Where a transfer notice is given under this regulation—
- (a) the scheme manager—
    - (i) must give a copy of the transfer notice to the Regulator; and
    - (ii) 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;
  - (b) the property and rights held by or vested in the trustees or managers as trustees or managers of the scheme are transferred to the Secretary of State, without further assurance, with effect from the time the transfer notice is given;
  - (c) any liabilities which—
    - (i) are liabilities of the scheme as a direct result of the rights or property referred to in sub-paragraph (b) being held by or vested in the trustees or managers of the scheme; but
    - (ii) are not liabilities to provide pensions or other benefits,are transferred to the Secretary of State, without further assurance, with effect from the time the transfer notice is given;
  - (d) any liabilities other than—
    - (i) liabilities referred to in sub-paragraph (c); and
    - (ii) liabilities in respect of any money purchase benefits referred to in paragraph (7),shall be treated as discharged;
  - (e) the trustees or managers are discharged from their obligations to provide pensions or other benefits to or in respect of any persons (including any obligation to provide guaranteed minimum pensions within the meaning of the 1993 Act) which are not pensions or benefits in respect of money purchase benefits referred to in paragraph (7);
  - (f) 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; and
  - (g) any contract which does not form part of any rights or liabilities transferred to the Secretary of State shall be treated as terminated.
- (3) Subject to paragraph (4), the property, rights and liabilities transferred in accordance with paragraph (2) include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned;
  - (b) property situated anywhere in the United Kingdom or elsewhere; and
  - (c) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.
- (4) Where, but for this paragraph, any rights or liabilities under a contract of employment between the trustees or managers of the scheme and an individual would be transferred to the Secretary of State under paragraph (2), this paragraph operates to terminate the contract of employment on the day preceding the day on which the transfer notice is given.
- (5) Subject to paragraphs (6) and (9) and without prejudice to the generality of paragraph (2), any legal proceedings or applications to any authority pending immediately before the transfer by or against any of the trustees or managers of the scheme in their capacity as trustees or managers shall be continued by or against the Secretary of State.
- (6) The liabilities transferred by paragraph (2)(c) do not include any liabilities in respect of an existing or future cause of action against the trustees or managers of the scheme if, disregarding the transfer, the trustees or managers would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme.

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(7) Paragraph (2)(b) 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.

(8) Neither paragraph (2)(d) nor (e) affects any right transferred to the Secretary of State in accordance with paragraph (2)(b).

(9) Paragraph (2)(e) does not discharge the trustees or managers of any obligations in respect of any existing or future causes of action against them for which, disregarding the discharge, they would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme.

(10) 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 paragraph (2)(e), the scheme manager shall notify those persons, or where any such person has an appointed representative, that appointed representative, within 28 days of the transfer notice having been given.

### Effect of transfer

**46.**—(1) Where the property, rights and liabilities of an occupational pension scheme are transferred to the Secretary of State in accordance with regulation 45(2)—

- (a) the transfer is binding on all persons even if, apart from this regulation, it would have required the consent or concurrence of any person;
- (b) no person shall have any power, in consequence of the transfer, to terminate or modify any interest or right which was vested in the trustees or managers of the scheme;
- (c) 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; and
- (d) any reference in any agreement, document or instrument of any description to the trustees or managers of the scheme shall have effect—
  - (i) so far as necessary for the purposes of giving effect to the transfer, as a reference to the Secretary of State; and
  - (ii) so far as necessary for the purposes of giving effect to sub-paragraph (c), as a reference to the scheme manager.

(2) Where, by virtue of paragraph (1)(c), any amount becomes payable, or is to be paid, to the scheme manager, that amount must be paid to the Secretary of State.

(3) Where, by virtue of regulation 45(5), an application to the Pensions Ombudsman under Part 10 of the 1993 Act is to be continued by or against the Secretary of State, any reference in section 146 of the 1993 Act to the trustees or managers of an occupational pension scheme shall have effect, so far as necessary for the purpose of giving effect to regulation 45(5), as a reference to the Secretary of State.

(4) Where, as a result of an application to the Ombudsman continued against the Secretary of State by virtue of regulation 45(5), a direction is given by the Ombudsman under section 151 of the 1993 Act, 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(a).

### Terms and conditions of contracts

**47.**—(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

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(a) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903, 2009/792 and 2009/1851.

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- (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 regulation 45(2); 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.

### **Foreign property, rights and liabilities**

**48.**—(1) The scheme manager must take all such steps as may be required to secure that the vesting in the Secretary of State, by virtue of regulation 45(2), of any foreign property, right or liability is effective under the relevant foreign law.

(2) Until the vesting of any foreign property, right or liability in the Secretary of State is effective under the relevant foreign law, the persons who were the trustees or managers of the scheme immediately before the transfer effected by regulation 45 must hold that property or right for the benefit of, or discharge that liability on behalf of, the Secretary of State.

(3) Nothing in this regulation prejudices the effect under the law of England and Wales, Scotland or Northern Ireland of the vesting in the Secretary of State in accordance with regulation 45 of any foreign property, right or liability.

(4) In this regulation references to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

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

**49.**—(1) Subject to paragraph (3), where the property transferred to the Secretary of State under regulation 45(2) 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 transfer of assets**

**50.**—(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) either—
  - (i) that person was not entitled to an annual payment on the day on which that person died; or
  - (ii) that person—



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- (aa) was entitled to an annual payment under these Regulations (or any Regulations which they replace) on the day on which that person died; and
  - (bb) nothing was payable under these Regulations (or any which they replace) prior to death;
  - (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 43 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 43; 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**

**51.**—(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.

### **Revocations**

**52.** The 2005 Regulations(a) are revoked.

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

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### Transitional provisions

**53.** Where a widow, widower or surviving civil partner is being treated as a survivor of a qualifying member immediately before the coming into force of these Regulations by virtue of regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009(a), that person shall continue to be treated as a survivor for the purposes of these Regulations.

**54.**—(1) Except where paragraph (2) applies—

- (a) where a beneficiary was a beneficiary to whom regulation 38(1) of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 applied immediately before the coming into force of these Regulations, the amount of that beneficiary's initial payment or annual payment shall be the amount to which the beneficiary was entitled before the coming into force of these Regulations;
- (b) where a beneficiary was a beneficiary to whom regulation 38(2) of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 applied immediately before the coming into force of these Regulations, the amount of that beneficiary's annual payment shall be the amount to which the beneficiary was entitled before the coming into force of these Regulations; and
- (c) where a qualifying member to whom sub-paragraph (a) or (b) applies dies, the expected pension and actual pension for the purposes of determining any payment to a survivor or surviving dependant shall be the amounts which were the expected pension and actual pension for the purposes of the determination of the payment in respect of the qualifying member.

(2) This paragraph applies where the amount of the annual payment or initial payment to which the beneficiary would be entitled if paragraph (1) did not apply would be higher than the amount to which the beneficiary is entitled in accordance with paragraph (1).

(3) Where paragraph (1) applies, the beneficiary's expected pension and actual pension shall be the amounts determined in accordance with the 2005 Regulations and regulation 8 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 as if the 2009 Regulations and these Regulations had not come into force.

**55.**—(1) Subject to paragraph (2), the 2005 Regulations shall continue to have effect as if these Regulations had not come into force where—

- (a) the beneficiary has, before the date on which these Regulations come into force, received an instalment of an annual payment; and
- (b) the beneficiary would be entitled to a higher annual payment if these Regulations had not come into force.

(2) Paragraph (1) does not apply in relation to—

- (a) the definition of "relevant date" in paragraph 5 of Schedule 2 to these Regulations where the qualifying member's rights in the scheme were transferred out of the scheme prior to the day on which the scheme began to be wound up; and
- (b) any member to whom paragraph 10(6) of Schedule 2 applies.

**56.** Schedule 2A of the 2005 Regulations shall continue to have effect as if these Regulations had not come into force for the purposes of determining the amount of ill health payment or interim ill health payment payable to a qualifying member where that qualifying member has received an instalment of such a payment prior to the coming into force of these Regulations.

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

*Name*  
Minister of State,

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(a) S.I.2009/1851.

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Date

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 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”.

**2.** 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 2011(scheme manager) in an interest-bearing account but may not otherwise invest any such grant.”.

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

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

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

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

**6.** 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 2011 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”.

**7.** 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”;

(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 Board, is appropriate”;

(c) in subsection (2) after paragraph (b) insert—

“(ba) the determination of interim pensions,”; and

(d) in subsection (3)—

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- (i) before paragraph (a) insert—
    - “(za) “interim pension” has the meaning given by regulations under section 286(1),”;
    - and
  - (ii) after paragraph (a)(i) insert—
    - “(ia) a professional adviser to the scheme;
    - (ib) any other person appearing to the Board to be a person who carries out, or is likely to carry out, activities relevant to the use of the assets of the scheme;”.
- 8. 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 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

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(a) 1993 c.48.  
(b) 1993 c.49.

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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<sup>(a)</sup> or regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(b)</sup> (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”.

**9.** In section 136 (power to validate contraventions of section 135)—

- (a) in subsection (1), for the words “to do so is consistent” to the end, substitute “it is appropriate to do so”;
- (b) in subsection (2), omit paragraphs (a), (c) and (d); after subsection (2) insert—

“(2A) The Board may copy the notice under subsection (2) to any other person to whom, in the opinion of the Board, the determination is relevant.”; and
- (c) omit subsections (4) and (5).

**10.** In section 165 (guaranteed minimum pensions)—

- (a) in subsection (1)—
  - (i) for “Commissioners of Inland Revenue” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
  - (ii) for “by reason of it assuming responsibility for an eligible scheme in accordance with this Chapter” substitute “by virtue of regulation 45 of the Financial Assistance Scheme Regulations 2011 (transfer of property, rights and liabilities)”;
- (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 45 of the Financial Assistance Scheme Regulations 2011”.

**11.** 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—

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(a) S.I. 1996/1847.

(b) S.R. 1996 No. 619.

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- “(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; and
  - (b) specifying the circumstances in which payments from the financial assistance scheme can be suspended.”; and
  - (c) omit subsection (3).
- 12.** In section 190 (information to be provided to the Board etc.)—
- (a) in subsection 1(b)(i) after “Schedule 5” insert “as modified by Schedule 1 to the Financial Assistance Scheme Regulations 2011”; 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”.
- 13.** In section 191 (notices requiring provision of information to the Board), in subsection (3)—
- (a) omit “and” at the end of paragraph (d); and
  - (b) 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 2011) which is paying annuities to former members of the scheme, and”.
- 14.** In section 194 (warrants to enforce entry of premises and obtaining of documents by, or on behalf, of the Board)—
- (a) omit in both places “, or any corresponding provision in force in Northern Ireland”;
  - (b) in subsection (1), after “information on oath” insert “or, in Northern Ireland, on complaint on oath”; and
  - (c) in subsection (2)(a), after “the information” insert “or complaint”.
- 15.** In section 195(1)(b) (offence of providing false or misleading information to the Board), omit “under this Act”.
- 16.** In section 197 (restricted information)—
- (a) in subsection (2), before paragraph (a) insert—
    - “(za) regulation 8 of the Financial Assistance Scheme Regulations 2011,”; and
  - (b) in subsection (6)(a), after “that section” insert “(as modified by the Financial Assistance Scheme Regulations 2011)”.
- 17.** In Section 202 (tax information)—
- (a) in subsection (1) for “tax functions” substitute “a function of the Revenue and Customs”;
  - (b) in subsection (2) for “section 182 of the Finance Act 1989 (c.26)” substitute “section 18 of the Commissioners for Revenue and Customs Act 2005 (c.11)”;
  - (c) for subsection (5) substitute—
    - “(5) In subsection (1), “a function of the Revenue and Customs” has the same meaning as in subsection 51(2) of the Commissioners for Revenue and Customs Act 2005.”.
- 18.** In section 203 (provision of information to members of schemes etc. by the Board)—
- (a) omit “or” at the end of subsection (1)(b)(ii) and insert after that sub-paragraph—
    - “(iia) relating to any determination made in relation to the financial assistance scheme, or”;
  - (b) in subsection (2), after “Chapter 3” insert “or, as the case may be, to a payment from the financial assistance scheme”;
  - (c) in subsection (4)—
    - (i) in paragraph (a), after “who is” insert “or was”;

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- (ii) in paragraph (b), after “member” insert “or former member”; and
- (d) 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 2011) which is paying annuities to former members of the scheme,”.
- 19.** 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), insert—
    - “(4) Where the Board 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 a reference to a person who held that position in relation to the scheme before it wound up.”.
- 20.** In section 217 (determinations of the PPF Ombudsman) for “regulations made under section 213 or 214” substitute “regulation 7 of the Financial Assistance Scheme Regulations 2011”.
- 21.** In paragraph 18(2) of Schedule 5 (delegation)—
  - (a) after sub-paragraph (g), insert—
    - “(ga) regulation 9(1)(e) of the Financial Assistance Scheme Regulations 2011 (“the 2011 Regulations”) (receiving notification of the details prescribed in regulation 16);
    - (gb) regulation 18 of the 2011 Regulations (working with qualifying pension schemes);
    - (gc) regulations 21 and 22 of the 2011 Regulations;
    - (gd) regulations 23 to 36 of, and Schedules 2 to 5 to, the 2011 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)),
      - (iii) receiving information pursuant to notification requirements; or
      - (iv) the determination of an entitlement to an annual payment under regulation 23 or 24;
    - (ge) regulations 43 and 44 of the 2011 Regulations;
    - (gf) regulation 49 of the 2011 Regulations (payments where amounts relating to money purchase benefits are transferred to the Secretary of State);
    - (gg) 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;
    - (gh) 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

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(a) S.I. 2005/2189 as amended by S.I. 2005/3256, 2007/3581, 2008/1903 and 2009/792.



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subsequent review decision) of the Financial Assistance Scheme (Internal Review) Regulations 2005(a);

(gi) 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(b);”;

(b) in sub-paragraph (h), for the words “paragraphs (a) to (g)” substitute “paragraphs (a) to (gi).

22. 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”.

### SCHEDULE 2

Regulations 25(1) and 27(2)

### 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—

“appropriate person” has the meaning given by regulation 2(1) of the FAS Information and Payments Regulations (interpretation);

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(c);

“guaranteed minimum pension” has the meaning given in section 8(2) of the 1993 Act;

“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;

(c) from which the amount of the actual pension or interim pension of a qualifying member, or of a survivor or surviving dependant of a qualifying member, may be derived; and

“revalued notional pension” means, subject to sub-paragraph (8) 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;

(cc) the day on which the qualifying member died; or

(dd) 30th March 2011, provided that the calculation date falls before 30th March 2011; and

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(a) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903 and 2009/792.

(b) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683 and 2009/792.

(c) S.I. 2005/2189 as amended by regulation 6 of these Regulations.

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- (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.

(3) The revaluation amount for the period referred to in paragraph (b) of the definition of “revalued notional pension” or, where paragraph (c) applies, the periods referred to in paragraphs (b) and (c) is—

- (a) where—
- (i) the period—
    - (aa) referred to in paragraph (b) of the definition of “revalued notional pension” where paragraph (c) of that definition does not apply; or
    - (bb) covered by both periods referred to in paragraphs (b) and (c) of the definition where 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
- (b) in any other case, the revaluation percentage of the notional pension.

(4) In sub-paragraph (3), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices during the revaluation period or periods determined in accordance with paragraphs (b) and (c) of the definition of “revalued notional pension”; and
- (b) the maximum revaluation rate.

(5) Subject to sub-paragraph (6), the method for determining the percentage increase in the general level of prices during the revaluation periods determined in accordance with paragraphs (b) and (c) of the definition of “revalued notional pension” 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.

(6) Where the entire period determined in accordance with paragraph (b) of the definition of “revalued notional pension” falls before 31st March 2011, the method for determining the percentage increase in the general level of prices 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.

(7) In paragraph (4)(b), “the maximum revaluation rate” is—

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- (a) if the period covered by the period or periods mentioned in paragraph (4)(a) is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (4)(a) had the general level of prices, whether determined in accordance with sub-paragraph (5) or (6), increased at the rate of 5% compound per annum during that period.

(8) In any case where the qualifying member is (or was) a qualifying member in respect of whom regulation 23(8) applies (or applied), an actuarial factor shall be applied to—

- (a) the expected pension; and
- (b) the revalued notional pension where—
  - (i) the qualifying member was not receiving payments from the scheme prior to the day on which the transfer notice was given; and
  - (ii) became entitled to the annual payment after the calculation date,

and any reference in this Schedule to the expected pension or, where paragraph (b)(i) and (ii) apply, the revalued notional pension in respect of that qualifying member, whether in relation to the amount payable to the member or to the member's survivors or surviving dependants, shall be construed as a reference to the expected pension or revalued notional pension as reduced by that actuarial factor.

(9) For the purposes of sub-paragraph (8), the actuarial factor to be applied shall be determined 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 person determining the factors considers relevant.

(10) Paragraphs 3 to 10 are subject to paragraphs 2, 11 and 12.

### **Exclusion of certain benefits**

**2.—**(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; 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.

### **Actual pension**

**3.—**(1) In this Schedule, “actual pension” means—

- (a) subject to sub-paragraphs (2) and (3), where an annuity has been put into payment for the beneficiary by the date determined in accordance with this paragraph, the annual rate of annuity which has been paid to the beneficiary as at the later of —
  - (i) the first day of the entitlement period; or
  - (ii) the day on which the qualifying pension scheme began to be wound up;
- (b) where no annuity has been put into payment for the beneficiary as at the date determined in accordance with paragraph (a) and no transfer notice has been given in respect of the scheme, the annual rate of annuity that could have been paid to the beneficiary as at the later of—

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- (i) the first day of the entitlement period; or
- (ii) the day on which the qualifying pension scheme began to be wound up,

with the assets available to discharge the liability of the scheme determined in accordance with section 73 of the 1995 Act or, where that section does not apply, in accordance with scheme rules;

- (c) where a transfer notice has been given in respect of the scheme and the beneficiary is a qualifying member to whom part 7 applies, or the survivor or surviving dependant of such a member, the amount determined by the scheme manager having regard to—
  - (i) whether the beneficiary owes an amount to the Secretary of State as a result of having owed an amount to the qualifying pension scheme prior to the transfer notice being given;
  - (ii) whether the beneficiary is a qualifying member who began to receive a payment from the qualifying pension scheme prior to the first day of the entitlement period or the survivor or surviving dependant of such a member;
  - (iii) whether the beneficiary is a qualifying member to whom regulation 29 applies or a survivor or surviving dependant of such a qualifying member;
  - (iv) whether the beneficiary is a qualifying member who has commuted a portion of the benefits deriving from the scheme on or after the day on which the scheme began to be wound up or the survivor or surviving dependant of such a member; and
  - (v) any other matters which the scheme manager considers relevant.

(2) Where the scheme manager considers that the annuity purchased for the beneficiary does not reflect the annual rate of annuity that could have been paid to that beneficiary during the entitlement period, the scheme manager may determine how the actual pension is to be calculated, having regard to—

- (a) any commutation of benefits deriving from the scheme on or after the day on which the scheme began to be wound up;
- (b) whether the member received payments from the scheme prior to the first day of the entitlement period; and
- (c) any other relevant matter.

(3) In determining the actual pension for a survivor or surviving dependant—

- (a) no account shall be taken of any amount (including any lump sum) payable to the 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; and
- (b) if the annuity has been transferred into the qualifying member's name and has become the subject of a pension sharing order after being so transferred, the scheme manager shall make the determination on the basis that the pension sharing order has not been made.

(4) In any case in which the interim pension paid to a beneficiary by the scheme does not reflect the annual rate of annuity (including any annual increases) which the scheme manager considers could have been paid to the beneficiary in a particular year in the period determined in accordance with sub-paragraph (5) or (6), the scheme manager may determine how the actual pension is to be calculated in respect of any year which falls within that period, having regard to such matters as the scheme manager considers relevant.

(5) Where the beneficiary is a member of a scheme in respect of which no transfer notice has been given, the period for the purposes of sub-paragraph (4) is the entitlement period.

(6) Where the beneficiary is a member of a scheme in respect of which a transfer notice has been given, the period for the purposes of sub-paragraph (4) is the period from—

- (a) the earlier of—
  - (i) the day on which the beneficiary became entitled to a payment under these Regulations (or any Regulations which they replace); and

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- (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 the transfer notice to the scheme trustees or managers.

(7) Where the beneficiary is—

- (a) a qualifying member to whom regulation 31 applied whose payment under Schedule 5 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.

(8) 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 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**

4.—(1) This paragraph applies to—

- (a) a member or former member of a qualifying scheme who—
  - (i) is a qualifying member under regulation 20(1), and
  - (ii) was either—
    - (aa) in receipt of present payment of a pension from the qualifying pension scheme; or
    - (bb) had attained normal retirement age or, in the case of a pension credit member, normal benefit age,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 20(5).

(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

$$(\text{expected pension} \times 0.9) - \text{actual pension}$$

(3) Subject to sub-paragraphs (4) and (5) and paragraphs 6 and 10, in this paragraph “expected pension” means—

- (a) subject to paragraphs (b), (c) and (d), 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 the member’s rights in the qualifying pension scheme as at the day before the day on which the qualifying pension scheme began to be wound up, multiplied, where the member is a member whose rights in the scheme have subsequently become subject to a pension debit, by the relevant percentage;
- (b) 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—
  - (i) the amount which would be determined in accordance with paragraph (a); 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;

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- (c) where the day on which the qualifying pension scheme began to be wound up is earlier than 14th May 2004 and the first day of the entitlement period falls on or after 14th May 2004, the aggregate of—
- (i) the amount which would be determined in accordance with paragraph (a);
  - (ii) where the first day of the entitlement period falls 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 first day of the entitlement period; and
  - (iii) where the first day of the entitlement period falls 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 30th March 2011; and
    - (bb) the revaluation amount for the period beginning on 31st March 2011 and ending on the first day of the entitlement period; or
- (d) where the day on which the qualifying pension scheme began to be wound up is on or after 14th May 2004 and the first day of the entitlement period falls on or after the day on which the scheme begins to be wound up, the aggregate of—
- (i) the amount which would be determined in accordance with paragraph (a);
  - (ii) where the first day of the entitlement period falls 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 first day of the entitlement period; and
  - (iii) where the first day of the entitlement period falls 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 30th March 2011; and
    - (bb) the revaluation amount for the period beginning on 31st March 2011 and ending on the first day of the entitlement period
- (4) In sub-paragraph (3)(b)(ii), 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 determined in accordance with sub-paragraph (3)(a).
- (5) In sub-paragraph (3)(c)(ii) and (iii) and (d)(ii) and (iii), the revaluation amount is—
- (a) where the period—
    - (i) determined in accordance with sub-paragraph (3)(c)(ii) or (d)(ii), where it applies; or
    - (ii) covered by the periods determined in accordance with paragraphs (aa) and (bb) of sub-paragraph (3)(c)(iii) or (d)(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) or (d)(i).
- (6) In sub-paragraphs (4) and (5), “the revaluation percentage” means the lesser of—
- (a) the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraph (3)(b)(ii), (c)(ii) or (iii) or (d)(ii) or (iii); and
  - (b) the maximum revaluation rate.
- (7) The method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraph (3)(b)(ii) is—

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

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 during which the relevant qualifying pension scheme began to be wound up.

(8) The method for determining the percentage increase in the general level of prices during the revaluation period or periods determined in accordance with sub-paragraph (3)(c)(ii) and (iii)(aa) and (d)(ii) 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 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.

(9) 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) and (d)(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 or becomes entitled to an annual payment as a result of regulation 23(8); and

B is the general level of prices for January 2011.

(10) In sub-paragraph (5)(b), “the maximum revaluation rate” in relation to the revaluation period or periods is—

- (a) if the period or periods mentioned in sub-paragraph (3)(c) or the period or periods mentioned in sub-paragraph (3)(d) 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 (5)(a) had the general level of prices increased at the rate of 5% compound per annum during those periods.

(11) 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 10 if that paragraph had applied and to such other matters as it considers relevant.

### Active and deferred members

5.—(1) This paragraph applies in respect of a qualifying member of a qualifying pension scheme who—

- (a) either—

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- (i) was an active member, a deferred member or a pension credit member of that scheme; and
  - (ii) was neither—
    - (aa) a member who had attained normal retirement age or, in the case of a pension credit member, normal benefit age, nor
    - (bb) in receipt of a present payment from the qualifying scheme on the day before the day on which the qualifying pension scheme began to be wound up; or
  - (b) became a pension credit member of the scheme on or after the day on which the qualifying pension scheme began to be wound up.
- (2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

$$(\text{expected pension} \times 0.9) - \text{actual pension}$$

(3) In sub-paragraph (2), “expected pension” means, subject to sub-paragraph (5) and paragraphs 6 and 10, 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 the member attained—
  - (i) normal retirement age; or
  - (ii) in the case of a pension credit member, normal benefit age, at the relevant date;
- (b) the revaluation amount for the first revaluation period (see sub-paragraphs (6) and (7));
- (c) the revaluation amount for the second revaluation period (see sub-paragraphs (8) to (12) and (14));
- (d) in any case where the first day of the entitlement period is on or after 31st March 2011, the revaluation amount for the third revaluation period (see sub-paragraphs (13) and (14)); and
- (e) 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—
    - (aa) attained normal retirement age; or
    - (bb) became a pension credit member of the scheme and attained normal benefit age,

the relevant amount for the fourth revaluation period (see sub-paragraphs (16) to (20)), multiplied, where the member is a member whose rights in the scheme have become subject to a pension debit after the relevant date, by the relevant percentage.

(4) In sub-paragraphs (3), (6) and (8) “relevant date” means—

- (a) subject to paragraph (b), the later of—
  - (i) the day on which the qualifying member’s pensionable service ended; and
  - (ii) where any of the qualifying member’s rights in the scheme have been transferred out of the scheme prior to the day on which the scheme began to be wound up, the day after the day on which the last such transfer occurred; and
- (b) where the member is a pension credit member, the day after the day on which the member became a pension credit member.

(5) 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



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- 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
  - (c) having regard to the expected pension which would have been determined in accordance with paragraph 10 if that paragraph had applied and to such other matters as it considers relevant.
- (6) The first revaluation period is the period—
- (a) beginning on the relevant date; and
  - (b) ending on the day before the day on which the qualifying pension scheme began to be wound up.
- (7) 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 or, where scheme rules are more favourable, in accordance with scheme rules.
- (8) The second revaluation period is the period—
- (a) beginning on—
    - (i) the day after the date determined in accordance with sub-paragraph (6)(b); or
    - (ii) if it is later, the relevant date; and
  - (b) ending on—
    - (i) the day on which the qualifying member attained normal retirement age;
    - (ii) the first day of the entitlement period in respect of the qualifying member; or
    - (iii) 30th March 2011,whichever is the earlier.
- (9) The third revaluation period is the period beginning on 31<sup>st</sup> March 2011 and ending on the first day of the entitlement period.
- (10) The revaluation amount for the second and third revaluation periods is, subject to sub-paragraph (13)
- (a) where the period—
    - (i) determined in accordance with sub-paragraph (8) where sub-paragraph (3)(d) does not apply; or
    - (ii) covered by the second and third revaluation periods where sub-paragraph (3)(d) applies,is a period of less than one month, nil; or
  - (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 (7).
- (11) In sub-paragraph (10), “the revaluation percentage” means the lesser of—
- (a) the percentage increase in the general level of prices during the second revaluation period or, where sub-paragraph (3)(d) applies, the second and third revaluation periods determined in accordance with sub-paragraphs (8) and (9) respectively; and
  - (b) the maximum revaluation rate.

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(12) The method for determining the percentage increase in the general level of prices during the second revaluation period 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 in which the last day of the revaluation period falls;

B is the level of the retail prices index for the month which falls two months before the month in which the day determined in accordance with sub-paragraph (8)(a) falls.

(13) 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 first day of the entitlement period in respect of the qualifying member falls; and

(b) B is the general level of prices for January 2011.

(14) In sub-paragraph (11)(b), “the maximum revaluation rate” in relation to the second and third revaluation periods is—

(a) 5% if either—

(i) sub-paragraph (3)(d) does not apply and the period referred to in sub-paragraph (c) is a period of 12 months; or

(ii) sub-paragraph (3)(d) applies and the periods referred to in sub-paragraph (3)(c) and (d) together form a period of 12 months; or

(b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (11)(a) had the general level of prices, whether determined in accordance with sub-paragraph (12) or (13), increased at the rate of 5% compound per annum during those periods.

(15) In determining the revaluation amount for the second or third revaluation period in accordance with sub-paragraphs (10) to (14), no revaluation shall be made in respect of any benefits which are not subject to revaluation under the scheme rules.

(16) The fourth revaluation period is the period—

(a) beginning on the day after the day determined in accordance with sub-paragraph (8)(b); and

(b) ending on 14 May 2004.

(17) The revaluation amount for the 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 (7); and

(iii) the revaluation amount for the second revaluation period under sub-paragraph (10).

(18) In sub-paragraph (17), “the revaluation percentage” means the lesser of—

(a) the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraph (16); and

(b) the maximum revaluation rate.

(19) The method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraph (16) is—

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

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.

(20) In sub-paragraph (18)(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 (18)(a) had the general level of prices increased at the rate of 5% compound per annum during that period.

### **Pension payable at an age other than normal retirement age**

6.—(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 4(3) and 5(3) 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 5(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 4(2) and 5(2) means the aggregate of the amounts calculated as the expected pension in accordance with paragraphs 4 and 5 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).

### **Payment for an entitlement by virtue of regulation 23(9)**

7.—(1) This paragraph applies where a qualifying member is entitled to an annual payment by virtue of regulation 23(9) 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 is due to be paid by virtue of regulation 23(9) and a relevant payment has previously been paid, the relevant payment is treated as a payment on account of the annual payment due by virtue of regulation 23(9).

(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 is due to the qualifying member by virtue of regulation 23(9).

(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 24 or 27(1).

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## Survivors of qualifying members

8.—(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<sup>(a)</sup> (creation of pension debts 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, or
  - (ii) would have been entitled to such an annual payment had he not died before he became so entitled.

(2) The annual payment payable to the survivor of a qualifying member to whom this paragraph applies shall be determined in accordance with sub-paragraph (3) or (5).

(3) Except where sub-paragraph (5) applies, the annual payment payable to a survivor shall be—

$$\frac{\text{expected pension} \times 0.9}{2} + H - A;$$

(4) In sub-paragraph (3), “expected pension” shall, subject to sub-paragraph (17), be determined—

- (a) where the qualifying member was entitled to 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 4(3)
- (b) 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 sub-paragraph (8).

(5) Where the qualifying member was a party to a polygamous marriage, the annual payment payable to each survivor shall be—

$$\frac{E + H - B}{N};$$

(6) 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 (5) did not apply;

“H” means the aggregate of—

- (a) one half of the amount by which the qualifying member’s annual payment had been increased in accordance with paragraph 12 as at the day on which the qualifying member died; and
- (b) where sub-paragraph (5) applies, the sum of the amounts by which each survivor’s annual payment had been increased in accordance with paragraph 12 as at the day on which the survivor died

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(a) 1999 c. 30.

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“N” means the number of survivors of that qualifying member.

(7) 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.

(8) For the purposes of sub-paragraph (4)(b), “expected pension” means the aggregate amount of—

- (a) the amount specified in paragraph 5(3)(a);
- (b) the revaluation amount for the first survivor revaluation period (see sub-paragraphs (9) and (10));
- (c) the revaluation amount for the second survivor revaluation period (see sub-paragraphs (11) and (13));
- (d) in any case where—
  - (i) the first day of the entitlement period in respect of the qualifying member; or
  - (ii) the first day of the entitlement period in respect of the survivor,is on or after 31st March 2011, the revaluation amount for the third survivor revaluation period (see sub-paragraphs (12) and (13); and
- (e) in any case where
  - (i) 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; or
  - (ii) the qualifying member attained normal retirement age before 14<sup>th</sup> May 2004 but died on or after 14<sup>th</sup> May 2004,the revaluation amount for the fourth survivor revaluation period (see sub-paragraphs (13) and (14)),

multiplied, where the qualifying member in respect of the survivor is a member whose rights in the scheme became subject to a pension debit after the relevant date, by the relevant percentage.

(9) The first survivor revaluation period is the period—

- (a) beginning on the relevant date determined in accordance with paragraph 5(4); and
- (b) ending on—
  - (i) the day before the day on which the scheme began to wind up;
  - (ii) the first day of the entitlement period in respect of the qualifying member; or
  - (iii) the first day of the entitlement period in respect of the survivor,whichever is the earliest.

(10) The revaluation amount for the first survivor revaluation period is the revaluation amount determined in accordance with paragraph 5(7).

(11) The second survivor revaluation period is the period—

- (a) beginning on the day after the date determined in accordance with sub-paragraph (9)(b); and
- (b) ending on—
  - (i) the earliest of—
    - (aa) the first day of the entitlement period in respect of the qualifying member;
    - (bb) the first day of the entitlement period in respect of the survivor; or
    - (cc) 31st March 2011; or
  - (ii) in any case where 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,

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the day on which the qualifying member died.

(12) The third survivor revaluation period is the period beginning on 31st March 2011 and ending on the earlier of—

- (a) the first day of the entitlement period in respect of the qualifying member; and
- (b) the first day of the entitlement period in respect of the survivor.

(13) Subject to sub-paragraph (16), the revaluation amounts for the second and third survivor revaluation period is the revaluation amount determined in accordance with paragraph 5(9) to (13).

(14) The fourth survivor revaluation period is the period—

- (a) beginning on the day after the day determined in accordance with sub-paragraph (11)(b); and
- (b) ending on 14 May 2004.

(15) Subject to sub-paragraph (16), the revaluation amount for the fourth survivor revaluation period is the revaluation amount determined in accordance with paragraph 5(15) to (18).

(16) In any case where the qualifying member in respect of the survivor died prior to becoming entitled to an annual payment, the revaluation amounts for the second and third survivor periods shall be the amounts determined in accordance with sub-paragraphs (13) and (15) as though in paragraph 5(13) and (19), for “the qualifying member” there was substituted “the survivor”.

(17) Where the qualifying member in respect of the survivor was a person to whom paragraph 10(2) applied—

- (a) where the qualifying member dies before the amount referred to in paragraph 10(1)(a) would have ceased to be payable, the annual payment to the survivor shall be redetermined in accordance with sub-paragraph (19) with effect from the date it would have been redetermined for the qualifying member had the qualifying member not died; and
- (b) where the qualifying member dies prior to attaining normal retirement age, the annual payment to the survivor shall be redetermined in accordance with sub-paragraph (19) with effect from the date it would have been redetermined for the qualifying member had the qualifying member not died but instead attained normal retirement age on the date of death.

(18) Where the qualifying member in respect of the survivor was a person to whom paragraph 10(2) applied and there has been a redetermination of the qualifying member’s annual payment in accordance with paragraph 10(2), the expected pension shall be the expected pension determined for the qualifying member when the qualifying member’s annual payments were redetermined.

(19) Where sub-paragraph (17) applies, for the purposes of redetermination—

- (a) the annual rate of pension for the purposes of paragraphs 4(3)(a) and 4(3)(b)(i) and the amount specified in paragraph 5(3)(a) shall be determined in accordance with paragraph 10(3)(a), (b) or (c) as it would have been determined for the qualifying member had the qualifying member not died;
- (b) the amount which was payable for the shorter period of time referred to in paragraph 6(1) shall be disregarded when determining revaluation under sub-paragraph (8); and
- (c) “H” means so much of the amount by which the survivor’s annual payment has been increased in accordance with paragraph 12 as at the date of the redetermination as are attributable to the amount of expected pension determined in accordance with paragraph (a).

### **Surviving dependants of qualifying members**

9.—(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—

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- (a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{0.5 \times Q + D}{2} - B;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

- (i) subject to paragraph (ii)—

$$\frac{(0.5 \times Q) + D - B}{N}; \text{ but}$$

- (ii) where the annual payment is redetermined and immediately before that redetermination there was only one surviving dependant—

$$\frac{(0.5 \times Q) + (2 \times D) - B}{N}.$$

- (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—

$$\frac{Q + D}{2} + S - B;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—

- (i) subject to paragraph (ii)—

$$\frac{Q + S + D - B}{N}; \text{ but}$$

- (ii) where the annual payment is redetermined and immediately before that redetermination there was only one surviving dependant—

$$\frac{Q + S + (2 \times D) - B}{N}.$$

- (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(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) Where the qualifying member in respect of the surviving dependant was a person to whom paragraph 10(2) applied—

- (a) the annual payment payable to the surviving dependant shall be redetermined—

- (i) where the qualifying member dies before the amount referred to in paragraph 10(1)(a) would have ceased to be payable, in accordance with paragraph (b) with effect from the date it would have been redetermined for the qualifying member had the qualifying member not died; and

- (ii) where the qualifying member dies prior to attaining normal retirement age, in accordance with paragraph (b) with effect from the date it would have been

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(a) S.I. 2009/1851

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redetermined for the qualifying member had the qualifying member not died but instead attained normal retirement age on the date of death;

- (b) for the purposes of redetermination, expected pension shall be determined in accordance with paragraph 8(19); and
- (c) in determining “H”, account shall only be taken of the proportion of the amount by which the surviving dependant’s annual payment has been increased as at the date of the redetermination as is attributable to the amount of expected pension determined in accordance with paragraph (b).

(6) 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—

- (c) subject to paragraph (b), where sub-paragraph (4) applies, the sum of the amounts by which each surviving dependant’s annual payment has been increased in accordance with paragraph 12 as at the day on which the event referred to in paragraphs (a) to (c) of that sub-paragraph occurred;
- (d) 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
- (e) in all other cases, nil;

“N” means the number of surviving dependants of the qualifying member;

“Q” means the sum of—

- (f) the product of 0.9 multiplied by the expected pension which has been or could have been determined in accordance with paragraph 9(4) or, where they apply, paragraph 9(5) or (17); and
- (g) the amount by which the qualifying member’s annual payment had been increased in accordance with paragraph 12 as at the day on which the qualifying member died;

“S” means—

- (h) 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 amount by which the survivor’s annual payment had been increased in accordance with paragraph 12 as at the day on which the survivor died; and
- (i) in all other cases, nil.

### **Redetermination**

**10.**—(1) Sub-paragraph (2) applies where—

- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under paragraph 4(2) or 5(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
- (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 paragraph (a) would have ceased to be payable under the rules of the pension scheme;
  - (ii) the interim pension paid to the beneficiary has been calculated on the basis that payments will reduce from the date on which the amount referred to in sub-



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paragraph (1)(a) would have ceased to be payable and an annuity is purchased for the beneficiary after that date; or

- (iii) a notional pension has been determined in respect of the beneficiary on the basis that it will include the amount payable for the shorter period for the duration of that period only.

(2) Where this sub-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 4(3)(a) 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 4(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 5(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;
- (e) paragraph 3 shall apply as though—
  - (i) in sub-paragraph (1)(a) for the words from “the later of” to the end, there were substituted “the day on which the additional amount ceased to be payable”; and
  - (ii) in sub-paragraph (1)(b) for the words from “the later of” to “wound up” there were substituted “that date”; and
- (f) the beneficiary shall be entitled to so much of the amount by which the annual payment has been increased in accordance with paragraph 12 as at the date referred to in sub-paragraph (2) as is attributable to the amount of expected pension determined in accordance with this paragraph.

(4) In sub-paragraph (3)(d) “the revaluation amounts” means—

- (a) the revaluation amount referred to in paragraph 4(3)(b)(ii) and (c)(ii) and (iii); and
- (b) the revaluation amounts referred to in paragraph 5(3)(b) to (d).

(5) Sub-paragraph (6) applies where a member’s rights in the scheme become subject to a debit in accordance with section 29 of the Welfare Reform and Pensions Act 1999 after the first day of the entitlement period in respect of the qualifying member as determined in accordance with regulation 23.

(6) Where this sub-paragraph applies, the scheme manager shall redetermine the annual payment payable to the member under paragraph 4 or 5 with effect from the date on which the member’s rights became subject to the debit.

(7) Where sub-paragraph (6) applies—

- (a) paragraph 3 shall apply as though for sub-paragraph (1)(b) there were substituted—
  - “(b) where no annuity has been purchased for the beneficiary as at the day on which the member’s rights in the scheme became subject to a pension debit, the annual rate of annuity that could have been purchased for the beneficiary as at the following day.”; and

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- (b) the member shall be entitled to the amount by which the annual payment has been increased in accordance with paragraph 12 as at the date of redetermination multiplied by the relevant percentage.

(8) Sub-paragraph (9) 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 3.

(9) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the indexation date.

(10) When redetermining an annual payment under sub-paragraph (9), the actual pension for the purposes of paragraph 4(2) or 5(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 3(2) and (3).

(11) 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.

### Cap on expected pension and actual pension

11.—(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 4 to 10 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 12 shall be the amount of the FAS cap.

(2) Where the amount of a qualifying member's actual pension determined in accordance with paragraph 3 exceeds—

- (a) the amount of a qualifying member's expected pension determined in accordance with the previous provisions of this Schedule multiplied by 0.9; or
- (b) the FAS cap,

no annual payment shall be payable to, or in respect of, that member.

(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 to an annual payment in the period beginning on 1st April 2009 and ending on 31st March 2010, £29,386;

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- (e) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2010 and ending on 31<sup>st</sup> March 2011, £29,386;
- (f) where the beneficiary becomes entitled to an annual payment in the period beginning on 1st April 2011 and ending on 31<sup>st</sup> March 2012, £30,297; and
- (g) where the beneficiary becomes entitled to an annual payment after 31st March 2012, the amount determined in accordance with sub-paragraph (4).

(4) For each successive period of 12 months from 1st April 2012, 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 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 8 or 9 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)(g) results in a fraction of a pound, that fraction shall be treated as a pound.

### **Annual increase to an annual payment**

**12.**—(1) Except where there is no percentage increase in the 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 4 to 10 shall be entitled, on the indexation date, to have that amount increased by—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date, or
- (b) where the first day of the entitlement period fell during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the first day of the entitlement period.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the 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—

- (c) 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 first day of the entitlement period, the product of X multiplied by W; and
  - (iii) the amount by which the annual payment has been increased under this paragraph immediately before the indexation date; or
- (d) where paragraph 11(1) applies, the aggregate of—

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- (i) so much of the expected pension as is, proportionately, attributable to post-1997 service; and
- (ii) the amount by which the annual payment has been increased under this paragraph immediately before the indexation date;

“post-1997 service” means—

- (e) pensionable service (whether actual or notional) which occurs on or after 6th April 1997; or
- (f) 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 by which the qualifying member’s annual payment had been increased under this paragraph as at the day on which the qualifying member died;

“X” means—

- (g) 0.9, where the beneficiary is the qualifying member;
- (h) 0.45, where the beneficiary is a survivor who is not a survivor to whom paragraph 8(6) applies;
- (i) the product of 0.45 divided by Y, where the beneficiary is a survivor to whom paragraph 8(6) applies;
- (j) 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
- (k) 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—

- (l) where there is only one surviving dependant, 2; or
- (m) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

### Initial payments

13. The preceding provisions of this Schedule shall apply for the purposes of determining the amount of an initial payment with the following modifications—

- (a) for paragraph 3, substitute—

#### “Interim pension

3.—(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 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

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- (ii) was determined following commutation, on or 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 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 on or after the day on which the scheme began to be wound up.”;
- (b) for “actual pension”, in each place, substitute “interim pension”;
- (c) for “annual payment”, in each place that it occurs (except in paragraph 1(1)), substitute “initial payment”;
- (d) in paragraph 8—
- (i) for sub-paragraph (3) substitute—
- “(3) Except where sub-paragraph (6) applies, the initial payment payable to a survivor of a qualifying member shall be—

$$\left( \frac{\text{expected pension} \times 0.9}{2} \right) - \text{interim pension payable to that survivor.}”;$$

- (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 4(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 sub-paragraph (9); and
- (b) the product of the amount by which the qualifying member’s annual payment had been increased in accordance with paragraph 12 as at the day on which the qualifying member died divided by 0.9”; and
- (iii) for sub-paragraphs (6) and (7) substitute—
- “(6) Where the qualifying member was a party to a polygamous marriage, the annual payment payable to each survivor shall be—

$$\frac{Z - Y}{N}.$$

- (7) In this paragraph—
- “N” means the number of survivors of the qualifying member;
- “Y” means the sum that would have been determined in accordance with sub-paragraph (3)(a) had that sub-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 sub-paragraph (3) had that sub-paragraph applied to the survivors.”; and
- (e) in sub-paragraph 10(5) for “23” substitute “27”.

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## **Rounding**

14. 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.

## **SCHEDULE 3**

Regulation 25(1)

### **DETERMINATION OF CERTAIN ANNUAL PAYMENTS WHERE A PRESENT PAYMENT WAS NOT BEING RECEIVED ON 1ST APRIL 2010**

#### **Introductory**

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment payable to a beneficiary in respect of whom regulation 25(4) applies.

(2) In this Schedule—

“A” means—

- (a) where the qualifying member is a qualifying member to whom regulation 29 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 (8) or (11) 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 31 applied, the amount, if any, by which the scheme manager determined the payment which would otherwise have been payable under Schedule 5 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 sum of the amounts by which each surviving dependant’s annual payment has been increased 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 43(1)(d) and the revaluation amount determined in accordance with sub-paragraph (4); 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—

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- (a) where the beneficiary is the survivor or surviving dependant of a qualifying member who immediately prior to death was entitled to a payment under Schedule 5, the payment to which the qualifying member was entitled in accordance with Schedule 5 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 43(1)(d) and the revaluation amount determined in accordance with sub-paragraph (4), 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 43(1)(d) and the revaluation amount determined in accordance with sub-paragraph (4); and
  - (iv) where the qualifying member died on or after the day on which the transfer notice was given, the amount by which the qualifying member’s annual payment had been increased in accordance with paragraph 6 as at the day on which the qualifying member died;

“R” means the amount of the revalued notional pension as construed in accordance with sub-paragraph (3);

“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 sum of the amounts by which each survivor’s annual payment had been increased under this Schedule as at 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 or any Regulations which they replace, 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 who became entitled to an annual payment prior to the date from which the scheme manager determined the notional pension could have been payable, the date on which the qualifying member became entitled to an annual payment; 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 43(3) and (4).

(3) Subject to sub-paragraph (8), in this Schedule, 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;

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- (bb) the day on which the beneficiary began to receive a present payment from the scheme; or
  - (cc) the day on which the qualifying member died.
- (4) The revaluation amount for the period referred to in paragraph (3)(b) is—
- (a) where—
    - (i) that period 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
  - (b) in any other case, the revaluation percentage of the notional pension.
- (5) In paragraph (4), “the revaluation percentage” means the lesser of—
- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (3)(b); and
  - (b) the maximum revaluation rate.
- (6) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (3)(b) is—

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

where—

- (a) A is the level of 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 level of the general level of prices for the month which falls two months before the month in which the calculation date falls.
- (7) In paragraph (5)(b), “the maximum revaluation rate” 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 paragraph (5)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.
- (8) In any case where—
- (a) the qualifying member—
    - (i) was not receiving a present payment from the scheme on the calculation date;
    - (ii) became entitled to an annual payment after the calculation date; and
    - (iii) is (or was) a qualifying member in respect of whom regulation 23(8) applies (or applied); and
  - (b) the notional pension has not been redetermined under regulation 44(4),

an actuarial factor shall be applied to the revalued notional pension and any reference in this Schedule to the revalued notional pension in respect of that qualifying member, whether in relation to the amount payable to the member or to the member’s survivors or surviving dependants, shall be construed as a reference to the revalued notional pension as reduced by that actuarial factor.

- (9) For the purposes of sub-paragraph (8), the actuarial factor to be applied shall be determined 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 person determining the factors considers relevant.

(10) 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



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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.

(11) Sub-paragraph (13) 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 (or any Regulations which they replace) in respect of any year in the period determined in accordance with sub-paragraph (12) 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 43(1)(d);
  - (ii) the revaluation amount determined in accordance with regulation sub-paragraph (4); and
  - (iii) the proportion of that year which falls after the 1st January.

(12) For the purposes of sub-paragraph (11), 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 (or any Regulations which they replace); 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.

(13) 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 (or any Regulations which they replace) 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 (or any Regulations which they replace) in respect of any year is lower than the sum of the amounts referred to in sub-paragraph (11)(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;

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- (iii) the amount of any payments made under these Regulations (or any which they replace) 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 the qualifying member died before the calculation date, 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 43 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(10) or (13); and

- (b) where the qualifying member died on or after the calculation date—
  - (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.

### **Amount of an annual payment – surviving dependants**

4.—(1) Where this Schedule applies, the annual payment payable to a surviving dependant of a qualifying member shall be—

- (a) where the qualifying member died before the calculation date, 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 43 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(10) or (13); and

- (b) where the qualifying member died on or after the calculation date, 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—

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$$\frac{0.5 \times Q + D}{2};$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—  
(i) subject to paragraph (ii)—

$$\frac{0.5 \times Q}{2} + D; \text{ but}$$

- (ii) where the annual payment is redetermined and immediately before that redetermination there was only one surviving dependant—

$$\frac{(0.5 \times Q) + (2 \times D)}{N}.$$

- (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—

$$\frac{Q + D}{2} + S;$$

- (b) there are two or more surviving dependants, the amount of the annual payment shall be—  
(i) subject to paragraph (ii)—

$$\frac{Q + S + D}{N}; \text{ but}$$

- (ii) where the annual payment is redetermined and immediately before that redetermination there was only one surviving dependant—

$$\frac{Q + S + (2 \times D)}{N}.$$

- (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.

### Redetermination

5.—(1) This paragraph applies where the survivor notional pension includes an amount in respect of an amount which under scheme rules would be payable as a result of the 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 period referred to in sub-paragraph (1) would have ended.

(3) When redetermining an annual payment under sub-paragraph (2), the scheme manager shall redetermine the survivor notional pension, having regard to the amount referred to in sub-paragraph (1).

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### Annual increases to an annual payment

6.—(1) Except where there is no percentage increase in the 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 have that amount increased by—

- (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 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 29 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 29 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 43(1)(d) and the revaluation amount determined in accordance with paragraph 1(4);
- (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 43 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 43(1)(d) and the revaluation amount determined in accordance with paragraph 1(4); 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 43(1)(d) and the revaluation amount determined in accordance with paragraph 1(4);

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- (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 43(1)(d) and the revaluation amount determined in accordance with paragraph 1(4); and
  - (ii) the amount by which the qualifying member's annual payment had been increased under this paragraph as at the day on which the qualifying member died; and
- (f) the amount by which the annual payment has been increased 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 29 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 29 not applied.

### **Rounding**

7. 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.

## SCHEDULE 4

Regulation 25(1)

### DETERMINATION OF CERTAIN ANNUAL PAYMENTS WHERE A PRESENT PAYMENT WAS BEING RECEIVED ON 1ST APRIL 2010

#### Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment payable to a beneficiary in respect of whom regulation 25(6) 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 (or any Regulations which they replace) 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 43(1)(d); and
  - (ii) the proportion of that year which falls after the 1<sup>st</sup> 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 (or any Regulations which they replace); 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 (or any Regulations which they replace) 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 (or any Regulations which they replace) 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,

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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 (or any Regulations which they replace) 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 43(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 31 applied; and
- (b) the scheme manager made a determination in accordance with paragraph 1(2) or (5) of Schedule 5, 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 43 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 the qualifying member died before the calculation date, 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 43 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 the qualifying member died on or after the calculation date, but before the day on which the transfer notice was given, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the survivor;

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- (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 43 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 43 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 the qualifying member died on or after the transfer date, 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 43 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 amount by which the qualifying member's annual payment had been increased under this Schedule as at the day on which the qualifying member died; and
- (d) where the qualifying member was entitled to a payment under Schedule 5 immediately prior to death, the relevant proportion of the payment to which the qualifying member was entitled in accordance with Schedule 5 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 the qualifying member died before the calculation date, 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 43 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 the qualifying member died on or after the calculation date, but before the date on which the transfer notice was given, 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 43 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 43 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 the qualifying member died on or after the transfer date, the amount which is the sum of—
  - (i) the proportion of the notional pension which relates to a pension payable to the surviving dependant;



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- (ii) the relevant proportion of the total amount of any annual increases which the scheme manager has determined under regulation 43 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 amount by which the qualifying member's annual payment had been increased under this Schedule as at the day on which the qualifying member died; and
- (d) where the qualifying member was entitled to a payment under Schedule 5 immediately prior to death, the relevant proportion of the payment to which the qualifying member was entitled in accordance with Schedule 5 immediately before the qualifying member died.

### **Redetermination**

5.—(1) This paragraph applies where—

- (a) the notional pension or survivor notional pension—
  - (i) 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 a pension would be payable; and
  - (ii) has been determined on the basis that it will include the amount payable for the shorter period for the duration of that period only;
- (b) the survivor notional pension includes an amount in respect of an amount which under scheme rules 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; or
- (c) the—
  - (i) scheme rules make provision for the pension payable to a survivor or surviving dependant to be higher for a specified period if the qualifying member dies within that period; and
  - (ii) scheme manager has determined the annual payment payable to the survivor or surviving dependant on the basis of the higher amount.

(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) or (c) would have ended.

(3) Except in relation to cases which fall within sub-paragraph (1)(c), 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).

### **Annual increases to an annual payment**

6.—(1) Except where there is no percentage increase in the general level of prices 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 43(8)(a)(ii) or (11)(a)(ii), a beneficiary shall be entitled, on each indexation date after the day on which the transfer notice is given, to have that amount increased by—

- (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—

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(a) the percentage increase in the general level of prices for the period of 12 months ending with 31st May last falling before the indexation date; and

(b) 2.5%;

“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 43(8)(a)(ii) or (11)(a)(ii) could be increased;

(ii) the total amount of any annual increases which the scheme manager has determined under regulation 43 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) the amount by which the beneficiary’s annual payment has been increased under this paragraph 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 43(8)(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 43 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 the amount by which the qualifying member’s annual payment had been increased under this Schedule as at the day on which the qualifying member died; and

(iv) the amount by which the beneficiary’s annual payment has been increased under this paragraph 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 43(8)(a)(ii) could be increased;

(ii) the total amount of any annual increases which the scheme manager has determined under regulation 43 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 43 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) the amount by which the beneficiary’s annual payment has been increased under this paragraph 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).

### **Rounding**

7. 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.

SCHEDULE 5 Regulations 30(2), 31(2) and 32(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 30, 31 or 32 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 43(1)(d); and
  - (ii) the proportion of that year which falls after the 1<sup>st</sup> 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.

(6) Where—

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- (a) the beneficiary is a surviving dependant to whom regulation 32 applies; and
- (b) the scheme manager made a determination under any of Schedules 2 to 4 to reduce the payment under that Schedule by any amount,
- (c) the scheme manager shall reduce the amount of the payment under this Schedule by the same amount.

### **Amount of the payment where regulation 30 applies**

2. Where a person is entitled to a payment in accordance with regulation 30, 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 43 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 31 applies**

3. Where a qualifying member is entitled to a payment in accordance with regulation 31, 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 43 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).

### **Amount of the payment where regulation 32 applies**

4. Where a person is entitled to a payment in accordance with regulation 32, the amount of that payment shall be the sum of—

- (a) the amount of the survivor 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 43 could be paid on 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) the amount by which the beneficiary's payment has been increased under Schedule 2, 3 or 4 as at the day on which the beneficiary attained the age of 23,

less any amount by which the scheme manager the payment is to be reduced under paragraph 1(6).

### **Annual increases**

5.—(1) Except where there is no percentage increase in the general level of prices 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

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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 have that amount increased by—

- (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 30, 31 or 32 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 general level of prices 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 case of a person to whom regulation 30 applies, the day on which the scheme’s liability to provide a pension or other benefit to the person arose;
- (b) in the case of a person to whom regulation 31 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; and
- (c) in the case of a person to whom regulation 32 applies, the day on which that person attained the age of 23;

“underlying rate” means—

- (a) the aggregate of—
  - (i) where regulation 30 applies, so much of the payment as the scheme manager determined under regulation 43(8)(b)(ii) could be increased;
  - (ii) where regulation 31 applies, so much of the payment as the scheme manager determined under regulation 43(8)(a)(ii) could be increased; and
  - (iii) where regulation 32 applies, so much of the payment as the scheme manager determined under regulation 43(11)(a)(ii) could be increased;
- (b) the total amount of any annual increases which the scheme manager has determined under regulation 43 could be paid on the notional pension from the relevant date until the day on which the transfer notice is given; and
- (c) the amount by which the payment has been increased in accordance with this paragraph 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).

### **Rounding**

6. Where the amount of a payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

### **EXPLANATORY NOTE**

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