
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

**The National Health Service Pension
Scheme (Scotland) Regulations 2008**

PART 3

BENEFITS FOR PRACTITIONERS, ETC.

CHAPTER 3.D

MEMBERS' RETIREMENT BENEFITS

Entitlement to pensions

Early retirement on ill health (active members)

3.D.7.—(1) A pension payable under this regulation is to be known as an ill health pension and may be paid at 2 different tiers known as a lower tier ill health pension and an upper tier ill health pension.

(2) An active member who has not reached the age of 65 and who has ceased to be employed in NHS employment is entitled to immediate payment of a lower tier ill health pension that is payable for life if—

- (a) in the opinion of the Scottish Ministers the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member's employment efficiently;
- (b) the member's employment is terminated because of that physical or mental infirmity;
- (c) the member has at least 2 years of qualifying service; and
- (d) the member has claimed the pension.

(3) An active member who has not reached the age of 65 is entitled to immediate payment of an upper tier ill health pension if—

- (a) in addition to meeting the condition in paragraph (2)(a), in the opinion of the Scottish Ministers the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration;
- (b) the member's employment is terminated because of that physical or mental infirmity;
- (c) the member has at least 2 years of qualifying service; and
- (d) the member has claimed the pension.

(4) The annual amount of a lower tier ill health pension (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4).

(5) The annual amount of an upper tier ill health pension (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4), but on the assumption that the member's pensionable service—

- (a) is increased by the enhancement period where the member has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member's pensionable service before and after the break, and all such other breaks (if any), as continuous; and
 - (b) is not increased by the enhancement period in the circumstances referred to in sub paragraph (a) if the member's pensionable service before and after the break is treated separately.
- (6) Subject to paragraph (7) in this regulation "the enhancement period" means two-thirds of the member's assumed pensionable service.
- (7) If the member's pensionable service includes both officer service and practitioner service—
- (a) the member's pensionable service shall be increased by the enhancement period and the enhancement factor shall be the proportion by which the member's pensionable service is increased by that period;
 - (b) the length of the member's officer service (under Part 2 of these Regulations) and the member's practitioner service will each be increased by the enhancement factor; and
 - (c) the annual amount of an upper tier ill health pension (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4), but on the assumption that the member's uprated earnings are increased by the enhancement factor.
- (8) Subject to paragraph (9) in this regulation "the member's assumed service" means the further pensionable service that the member could have counted if the member had continued in service until reaching the age of 65.
- (9) To the extent that any increase under paragraph (8) would cause a member's pensionable service to exceed the limit of 45 years provided for in regulation 3.A.3(3) (meaning of "pensionable service"), the amount of any excess will be reduced accordingly.
- (10) This regulation is subject to—
- (a) regulation 3.G.4 (effect of re-employment on upper tier ill health pensions); and
 - (b) regulation 3.G.5 (re-employed lower tier ill health pensioners).
- (11) A member does not qualify for a pension under this regulation if the member's NHS employment has been terminated by the member—
- (a) being dismissed from such employment (unless the Scottish Ministers are satisfied that the member was dismissed because of the member's infirmity);
 - (b) retiring or resigning from such employment at a time when the member was the subject of disciplinary proceedings or had been notified that such proceedings were being contemplated; or
 - (c) otherwise retiring or resigning from such employment unless at the time of doing so the member's employing authority notified the Scottish Ministers in writing that the member's physical or mental infirmity is the reason for the termination of that employment and the Scottish Ministers are satisfied that is the case.
- (12) For the purposes of determining whether a member is permanently incapable of discharging the duties of the member's employment efficiently under paragraph (2)(a), the Scottish Ministers must have regard to the factors in paragraph (14) (no one of which is decisive) and disregard the member's personal preference for or against engaging in that employment.
- (13) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (3)(a), the Scottish Ministers must have regard to the factors in paragraph (15) (no one of which is decisive) and disregard the factors in paragraph (16).
- (14) The factors to be taken into account for paragraph (12) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
 - (b) the member's—
 - (i) mental capacity; and
 - (ii) physical capacity;
 - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his incapacity, irrespective of whether such rehabilitation is undergone; and
 - (d) any other matter which the Scottish Ministers consider appropriate.
- (15) The factors to be taken into account for paragraph (13) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
 - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
 - (i) mental capacity;
 - (ii) physical capacity;
 - (iii) previous training; and
 - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
 - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his or her incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
 - (i) mental capacity; and
 - (ii) physical capacity;
 - (d) such type and period of training which it would be reasonable for the member to undergo in respect of his or her incapacity (irrespective of whether such training is undergone) having due regard to the member's—
 - (i) mental capacity;
 - (ii) physical capacity;
 - (iii) previous training; and
 - (iv) previous practical, professional and vocational experience; and
 - (e) any other matter which the Scottish Ministers consider appropriate.
- (16) The factors to be disregarded for paragraph (13) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
 - (b) the geographical location of the member.
- (17) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Scottish Ministers consider—
- (a) that it would be reasonable for the member to refuse;
 - (b) would provide no benefit to restoring the member's capacity for—

- (i) discharging the duties of the member’s employment efficiently under paragraph (2) (a); or
- (ii) engaging in regular employment of like duration under paragraph (3)(a), before the member reaches age 65; or
- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;

“permanently” means the period until age 65; and

“regular employment of like duration” means such employment as the Scottish Ministers consider would involve a similar level of engagement to the member’s current pensionable service as a practitioner.