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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 117**

**The National Health Service Superannuation  
Scheme (Scotland) Regulations 2011**

**PART E**

**BENEFITS FOR MEMBERS**

**Normal retirement pension**

**E1.**—(1) A member who retires from pensionable employment at any time on or after attaining age 60 is entitled to a pension under this regulation at a yearly rate of 1/80th of final year's pensionable pay for each complete year of pensionable service, plus the relevant daily proportion of that rate for each additional day of such service.

(2) A member who stays in pensionable employment until age 75 is entitled to receive a pension under this regulation at that age even if that member does not retire from such employment.

(3) Subject to paragraph (4), where a member who leaves pensionable employment on or after 1st April 2008 becomes entitled to a pension under this regulation, the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.

(4) A lump sum payment under paragraph (3) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

(5) For the purposes of paragraph (4), the Scottish Ministers may require whatever medical evidence they consider necessary.

(6) The amount of the lump sum payable under paragraph (3)—

- (a) is equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
- (b) is payable in addition to the lump sum on retirement payable under regulation E13 (which is not subject to any reduction under regulation E14(1)) and the lump sum in place of part of a pension payable under regulation E7.

(7) For the purposes of calculating the amount of the lump sum payable under paragraph (6), the member will be treated as if the member had made an election under regulation E17 to receive the maximum amount of a further lump sum payable under that regulation.

**Early retirement pension on ill health grounds (pre 1st April 2008)**

**E2.**—(1) This regulation applies to a member who—

- (a) retires from pensionable employment on or after 1st April 2008 and submitted a claim together with supporting medical evidence pursuant to regulation T1 (claims for benefits)

for benefits under this regulation which was received by the Scottish Ministers before 1st April 2008; or

(b) returns to employment which attracts a pension in accordance with paragraph (12).

(2) A member to whom this regulation applies who retires from pensionable employment because of physical or mental infirmity that makes that member permanently incapable of efficiently discharging the duties of that employment is entitled to receive an immediate pension under this regulation if that member has at least 2 years' qualifying service or qualifies for a pension under regulation E1 (normal retirement pension).

(3) Subject to paragraph (4), the pension under this regulation will be calculated as described in regulation E1 (normal retirement pension).

(4) If the member retires from pensionable employment before reaching age 65 and satisfies the requirements of any of paragraphs (5) to (7), the pensionable service upon which the pension is based, excluding any additional service purchased under regulation Q1 or additional service under regulation R3(5), will be increased as described in whichever of paragraphs (5) to (7) is applicable or, if both of paragraphs (6) and (7) apply, as described in whichever of those paragraphs is more favourable to the member.

(5) If the member has at least 5 years' qualifying service but not more than 10 years' pensionable service, the pension will be based on the shorter of—

- (a) twice the member's pensionable service; and
- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65.

(6) If the member has more than 10 but not more than 20 years' pensionable service, the pension will be based on the shorter of—

- (a) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 65; and
- (b) 20 years' pensionable service.

(7) If the member has more than 10 years' pensionable service and has not reached age 60, the pension will be based on the shortest of—

- (a) the member's actual pensionable service increased by a period of 6 years and 243 days;
- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until age 60; and
- (c) 40 years' pensionable service.

(8) Subject to paragraph (9), where a member becomes entitled to a pension under paragraph (2), the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.

(9) A lump sum payment under paragraph (8) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

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

(11) The amount of the lump sum payable under paragraph (8)—

- (a) will be equal to 5 times the yearly rate of the member's incapacity pension (calculated in accordance with this regulation); and

- (b) is payable in addition to the lump sum on retirement payable under regulation E13 (which must not be subject to any reduction under regulation E14 (deductions from lump sum)) and the lump sum in place of part of pension payable under regulation E17.

(12) Where a member to whom a pension is payable under this regulation returns to NHS employment, that employment may be pensionable under this Section of the scheme provided that the member is under the age of 50 at the date on which the member returns to NHS employment.

(13) Where further employment becomes pensionable by virtue of paragraph (12), the subsequent period of pensionable employment is to be treated separately from all other pensionable employment for the purposes of calculating the member's benefits.

(14) For the purposes of calculating the amount of lump sum payable under paragraph (11), the member will be treated as if the member had made an election under regulation E17 to receive the maximum amount of further lump sum payable under that regulation.

### **Early retirement pension on ill health grounds (post 1st April 2008)**

**E3.**—(1) This regulation applies to a member who—

- (a) retires from pensionable employment on or after 1st April 2008;
- (b) did not submit a claim together with supporting medical evidence pursuant to regulation T1 (claims for benefits) for benefits under regulation E2 which was received by the Scottish Ministers before 1st April 2008; and
- (c) is not in receipt of a pension under regulation E2.

(2) A member to whom this regulation applies who retires from pensionable employment before normal benefit age is entitled to a pension under this regulation if—

- (a) the member—
  - (i) has at least 2 years qualifying service; or
  - (ii) qualifies for a pension under regulation E1; and
- (b) the member's employment is terminated because of physical or mental infirmity as a result of which the member is—
  - (i) permanently incapable of efficiently discharging the duties of that employment (the “lower tier condition”); or
  - (ii) permanently incapable of any regular employment of like duration (the “upper tier condition”) in addition to meeting the lower tier condition.

(3) Subject to paragraph (4), the pension to which a member is entitled—

- (a) upon satisfaction of the lower tier condition (“the lower tier pension”); or
- (b) upon satisfaction of the upper tier condition in addition to meeting the lower tier condition (“the upper tier pension”),

will be calculated as described in regulation E1.

(4) Subject to paragraphs (5) and (6), if the member meets the upper tier condition in addition to meeting the lower tier condition, the pensionable service on which the pension is based will be increased by two-thirds of the pensionable service the member could have completed had the member stayed in pensionable employment until normal benefit age.

(5) If the member's employment is terminated on or before 31st March 2016, the minimum amount by which the member's pensionable service will be increased under paragraph (4) will be the lesser of—

- (a) 4 years pensionable service; and

- (b) the pensionable service the member could have completed if the member had stayed in pensionable employment until normal benefit age.
- (6) To the extent that any increase under paragraph (4) or (5) would cause a member's pensionable service to exceed the limit provided for in regulation C2(7) (meaning of "pensionable service"), the amount of any excess will be reduced accordingly.
- (7) Subject to paragraph (8), where a member becomes entitled to a pension by virtue of meeting the upper tier condition, the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent—
- (a) with the contracting-out requirements and preservation requirements of the 1993 Act; and
  - (b) the lump sum rule.
- (8) A lump sum payment under paragraph (7) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.
- (9) For the purpose of paragraph (8), the Scottish Ministers may require whatever medical evidence they consider necessary.
- (10) The amount of the lump sum payable under paragraph (7)—
- (a) is equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
  - (b) is payable in addition to the lump sum on retirement payable under regulation E13 (which is not subject to any reduction under regulation E14) and the lump sum in place of part of pension payable under regulation E17.
- (11) The employment of a member to whom a pension is payable under this regulation may be pensionable under this Section of the scheme if the member is under age 50—
- (a) on the date the member returns to NHS employment if the member became entitled to receive a pension under a lower tier condition on the day the member retired from pensionable employment;
  - (b) on the day after the protection period in regulation E5(6)(b) ends if—
    - (i) the member became entitled to receive a pension under an upper tier condition on the day he retired from pensionable employment; and
    - (ii) the Scottish Ministers did not discharge their liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation; or
  - (c) on the day after the protection period in regulation E5(6)(b) ends if—
    - (i) the member became entitled to receive a pension under an upper tier condition in place of a pension under a lower tier condition on the date of the Scottish Ministers determination under regulation E4; and
    - (ii) the Scottish Ministers did not discharge their liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation.
- (12) For the purposes of calculating the amount of lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E17 to receive the maximum amount of a further lump sum payable under that regulation.
- (13) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), the Scottish Ministers must have regard to the factors in paragraph (15) and disregard the member's personal preferences for or against engaging in that employment.

(14) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (2)(b)(ii), the Scottish Ministers must have regard to the factors in paragraph (16) and disregard the factors in paragraph (17).

(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) 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 the member's incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Scottish Ministers consider appropriate.

(16) The factors to be taken into account for paragraph (14) 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 the member's incapacity (irrespective of whether such rehabilitation is undergone) having 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 the member's incapacity (irrespective of whether such training is undergone) having 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.

(17) The factors to be disregarded for paragraph (14) are—

- (a) the member's personal preference for or against engaging in any particular employment; and
- (b) the geographical location of the member.

(18) 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) efficiently discharging the duties of the member's employment under paragraph (2)(b)(i); or
  - (ii) regular employment of like duration under paragraph (2)(b)(ii), before the member reaches normal benefit age; and
- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;

“permanently” means the period until normal benefit age; and

“regular employment of like duration” means—

- (a) in the case of a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's current pensionable service as a non-GP provider; and
- (b) in all other cases, where prior to retiring from employment that is pensionable the member was employed—
  - (i) on a whole-time basis, regular employment on a whole-time basis; or
  - (ii) on a part-time basis, regular employment on a part-time basis, having regard to the number of hours, half days and sessions the member worked in that pensionable employment.

### **Re-assessment of ill health condition determined under regulation E3**

**E4.**—(1) This regulation applies to a member in receipt of a lower tier pension under regulation E3.

(2) A member to whom this regulation applies may ask the Scottish Ministers to consider whether the member subsequently meets the upper tier condition if—

- (a) by notice in writing at the time of award of the pension, the Scottish Ministers informed the member that the member's case may be considered once within a period of three years commencing with the date of that award to determine whether the member satisfies the upper tier condition at the date of such a consideration;
- (b) the member provides further medical evidence to the Scottish Ministers relating to the satisfaction of the upper tier condition at the date of the Scottish Ministers' consideration and that further medical evidence is provided—
  - (i) in the case of a member who does not engage in further NHS employment during the three year period referred to in sub-paragraph (a), before the end of that period; or
  - (ii) in the case of a member who does engage in further NHS employment during the three year period referred to in sub-paragraph (a), before the first anniversary of the day on which that employment commences or before the end of that period if sooner;
- (c) that further medical evidence relates to the same physical or mental infirmity that qualified the member for the member's lower tier pension;
- (d) the member has not become entitled to an upper tier pension in respect of any later service under regulation S4(6) (benefits in respect of pensionable employment after pension becomes payable under regulation E3); and

- (e) the member is not—
  - (i) a 2008 Section Optant within the meaning of regulation 2.K.1 or 3.K.1 of the 2008 Section of the Scheme, or
  - (ii) a Waiting Period Joiner within the meaning of regulation 2.L.1 or 3.L.1 of the 2008 Section of the Scheme, who has become entitled to an upper tier ill-health pension under regulation 2.D.8 or 3.D.7 of that Section.
- (3) If, after considering the further medical evidence provided by a member the Scottish Ministers determine that the member satisfies the upper tier condition—
  - (a) the Scottish Ministers must pay from the date of that determination an upper tier pension under regulation E3(2) in place of the lower tier pension being paid to that member; and
  - (b) that pension is calculated in accordance with regulation E3(4) as if that paragraph included the words “from the date of the Scottish Ministers determination under regulation E4” after “employment”.
- (4) Only one consideration of a member's case may be undertaken under this regulation.

### **Further employment after a benefit is paid under regulation E3**

- E5.**—(1) This regulation applies to a member who—
- (a) is in receipt of an upper tier pension under regulation E3 (“the original pension”); and
  - (b) enters into further employment.
- (2) Such a member is to be paid a lower tier pension (“a substitute pension”) in place of the original pension—
- (a) from the next substitute pension payment date following the day on which the member's annual earnings from further employment (whether NHS employment or otherwise) in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or
  - (b) in the case of a member who enters into further NHS employment, from the next substitute pension payment date following the first day on which the member is so employed which falls after the anniversary of the member's entry into the further NHS employment (whether or not that day is part of a continuous period of further NHS employment beginning with the member's entry into that employment), if sooner.
- (3) A member who is in receipt of a substitute pension may ask the Scottish Ministers to consider reinstating the original pension if—
- (a) the member is under normal benefit age;
  - (b) the member makes such a request in writing and provides supporting medical evidence to the Scottish Ministers before the end of the protection period; and
  - (c) the member's further employment is terminated before the end of the protection period.
- (4) If, after considering that evidence the Scottish Ministers determine that the member again satisfies an upper tier condition in respect of the member's earlier employment, the Scottish Ministers must recommence paying, from the day after the date that the further employment is terminated, the original pension in place of the substitute pension.
- (5) A member to whom this regulation applies who is in receipt of an upper tier pension must—
- (a) notify the Scottish Ministers immediately and in writing if either of the following apply—
    - (i) the member's annual earnings in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or

- (ii) the member is engaged in further NHS employment after the end of the protection period in paragraph (6)(b); and
  - (b) provide any other information in connection with the member's earnings or further employment requested by the scheme administrator or any other person that the Scottish Ministers may specify.
- (6) In this regulation “the protection period” means—
- (a) a period of one year beginning with the day on which the member's annual earnings from further employment that is not NHS employment first exceed the lower earnings limit for national insurance contributions applicable to that year; or
  - (b) a period of one year beginning with the first day the member enters into further NHS employment.

### **Early retirement pension (redundancy etc.)**

- E6.—**(1) This regulation applies to a member—
- (a) who—
    - (i) was in pensionable employment on 1st December 2006; or
    - (ii) returns to such employment on, or after, that date and who is entitled to a preserved pension under regulation L1 (early leavers returning to pensionable employment); or
    - (iii) returns to pensionable employment on or after that date that attracts a pension in accordance with regulation E2(12) or E3(11); [<sup>F1</sup>or]
    - (iv) returns to pensionable employment after that date having had a break in such employment which does not exceed 12 months but includes 1st December 2006 and who is not entitled to a preserved pension under regulation L1; or
    - (v) is certified by the member's employing authority as having a period of continuous employment (determined in accordance with terms and conditions relevant to that employment and as they applied on 1st October 2006);
  - (b) whose employment is terminated by the member's employing authority before 1st October 2011; and
  - (c) who satisfies the conditions specified in paragraph (2).
- (2) Those conditions are that—
- (a) the member has at least 5 years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
  - (b) the Scottish Ministers certify—
    - (i) that the member's employment is terminated by reason of redundancy; or
    - (ii) with the agreement of the employing authority, that the member's employment is terminated in the interests of the efficiency of the service in which the member is employed; and
  - (c) the member's employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment.
- (3) A member who satisfies the conditions in paragraph (2) is entitled to a pension calculated as described in regulation E1 (normal retirement pension).
- (4) This regulation does not apply to—
- (a) practice staff;
  - (b) practitioners;



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

#### Textual Amendments

- F1** Word in reg. E6(1)(a)(iii) inserted (1.4.2011) by [The National Health Service Superannuation Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/173\)](#), regs. 1(2), 2(c)

#### Early retirement pension (redundancy etc. new starters and post-transition)

**E7.**—(1) This regulation applies to a member—

- (a) whose pensionable employment is terminated by the member's employing authority; and
- (b) who satisfies the conditions specified in paragraph (2).

[<sup>F2</sup>(2) Those conditions are that—

- (a) the member has two years' qualifying service and has attained normal minimum pension age or, where relevant, protected pension age;
- (b) the member's employing authority certifies—
  - (i) that the member has at least two years' continuous employment determined in accordance with any terms and conditions applying to that employment; and
  - (ii) if the member's employment is terminated by reason of redundancy, that the member is entitled to claim a pension under this regulation as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to [<sup>F3</sup>the member] in accordance with those terms and conditions;
- (c) the member's employing authority does not certify that the member has unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
- (d) the Scottish Ministers certify—
  - (i) that the member's employment is terminated by reason of redundancy; or
  - (ii) with the agreement of the employing authority, that the member's employment is terminated in the interests of the efficiency of the service in which the member is employed; and
- (e) the member makes a claim for the pension referred to in this regulation.]

(3) A claim referred to in paragraph (2)(e) must—

- (a) be in writing and addressed to the Scottish Ministers;
- (b) be made within 6 months of the employment being terminated; and
- (c) contain such information as the Scottish Ministers may require.

(4) [<sup>F4</sup>Subject to paragraph (4A), a person] who satisfies the conditions in paragraph (2) is entitled to a pension calculated as described in regulation E1.

[<sup>F5</sup>(4A) A member who satisfies the conditions in paragraph (2) is not entitled to a pension under this regulation if the Scottish Ministers, after consultation with the scheme actuary, decide that the amount of the pension would be less than the amount of the guaranteed minimum pension to which the member is entitled.]

(5) Where—

- (a) a person who claims a pension under this regulation has received—
  - (i) a redundancy payment under the Employment Rights Act 1996 <sup>M1</sup>; or
  - (ii) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain; or
  - (iii) a payment made by virtue of any arrangement made pursuant to paragraph 20(2) of Schedule 7A to the National Health Service Act 1978 (National Health Service Trusts – general powers) <sup>M2</sup>,
 in respect of the cessation of the employment; and
- (b) the terms and conditions relevant to the employment require that payment or payments be reduced to take account of the additional contributions the employing authority must make to the Scottish Ministers in accordance with regulation D2(5); but
- (c) payment or payments have not been so reduced,

the pension must be reduced by an amount equal to the amount of that payment or those payments and may be reduced to zero.

(6) This regulation does not apply to—

- (a) practice staff;
- (b) practitioners;
- (c) non-GP providers;
- (d) a member who is providing piloted services under a pilot scheme;
- (e) a member to whom regulation R11(1)(a) or (b) of these Regulations applies; or
- (f) a member who is a dental pilot scheme employee and who is employed by a provider of piloted services other than a Health Board.

#### Textual Amendments

- F2** Reg. E7(2) substituted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **11** (with reg. 71)
- F3** Words in reg. E7(2)(b)(ii) substituted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **8**
- F4** Words in reg. E7(4) substituted (1.4.2015) by virtue of [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **8(a)**
- F5** Reg. E7(4A) inserted (1.4.2015) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/96\)](#), regs. 1(2), **8(b)**

#### Marginal Citations

- M1** 1996 c.18.
- M2** 1978 c.29. Schedule 7A was inserted by Schedule 6 to the [National Health Service and Community Care Act 1990 \(c.19\)](#).

#### Early retirement pension (redundancy etc. notifications)

**E8.**—(1) This regulation applies to a member—

- (a) who satisfies the conditions specified in regulations E6 and E7; and

- (b) whose pensionable employment is terminated by the member's employing authority on, or after, 1st December 2006 but before 1st October 2011.
- (2) A member referred to in paragraph (1) may notify the Scottish Ministers as to which of those regulations the member wishes to apply to the member and such a notification must be—
  - (a) in writing (but the Scottish Ministers may, in their discretion, accept notification in another form);
  - (b) given within 6 months of the employment being terminated; and
  - (c) given on an irrevocable basis.
- (3) Where a member does not notify the Scottish Ministers within the period mentioned in paragraph (2)(b), regulation E6 shall apply.

### **Early retirement pension (redundancy and special classes)**

- E9.**—(1) This regulation applies to a member—
- (a) who has attained the age of 55;
  - (b) to whom regulation R2 (nurses, physiotherapists, midwives and health visitors) or regulation R3 (mental health officers) applies; and
  - (c) whose employment is terminated on, or after, 1st October 2011, and either—
    - (i) the Scottish Ministers certify that that employment is terminated by reason of redundancy; or
    - (ii) with the agreement of the employing authority, the Scottish Ministers, certify that that employment is terminated in the interests of the efficiency of the service in which the member is employed.
- (2) A member referred to in paragraph (1) who would, if the member made a claim for it, be entitled to a pension in accordance with regulation E7—
- (a) must (for the purpose of this regulation) be treated as retiring from pensionable employment on the day on which the member's employment terminates; and
  - (b) is entitled to a pension under regulation E1 or E11 if the member makes a claim for it.
- (3) A claim referred to in paragraph (2)(b) must—
- (a) be in writing and addressed to the Scottish Ministers;
  - (b) be made within 6 months of the employment being terminated; and
  - (c) contain such information as the Scottish Ministers may require.

### **Continuing entitlement to a pension under regulation E1 or E11**

- E10.**—(1) This regulation applies to a member—
- (a) whose employment is certified by the Scottish Ministers to have terminated by reason of redundancy on, or after, 1st December 2006; and
  - (b) who has attained—
    - (i) normal minimum pension age, or, where relevant, protected pension age; or
    - (ii) age 60.
- (2) A member referred to in paragraph (1) who would, if the member made a claim for it, be entitled to a pension in accordance with regulation E7—
- (a) must (for the purposes of this regulation) be treated as retiring from pensionable employment on the day on which the member's employment terminates; and

- (b) is entitled to a pension under regulation E1 or E11 if—
  - (i) the member satisfies the conditions set out in those regulations; and
  - (ii) the member makes a claim for it.
- (3) A claim referred to in paragraph (2)(b) must—
  - (a) be in writing and addressed to the Scottish Ministers;
  - (b) be made within 6 months of employment terminating; and
  - (c) contain such information as the Scottish Ministers may require.

### **Early retirement pension (with actuarial reduction)**

**E11.**—(1) A member with at least 2 years' qualifying service, who retires from pensionable employment at any time after reaching normal minimum pension age or, where relevant, protected pension age but before reaching age 60 will, if a request is made in writing to the Scottish Ministers, be entitled to payment of an immediate pension.

(2) The pension under this regulation will be calculated as described in regulation E1 (normal retirement pension), and except for any pension in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2, it will then be reduced by such amount as the Scottish Ministers, after consulting the scheme actuary, may determine.

(3) Where a pension is payable under paragraph (1), any additional amount payable under these Regulations shall also become payable and be reduced in like manner as described in paragraph (2).

(4) A member shall not be entitled to a pension under this regulation if the Scottish Ministers determine, having taken advice from the scheme actuary, that the pension, as reduced under paragraph (2), would be insufficient to meet the liability to provide a guaranteed minimum pension.

### **Preserved pension**

**E12.**—(1) Subject to paragraphs (3) and (4), a member who leaves pensionable employment before age 60 without becoming entitled to an immediate pension under any of regulations E1 to E11 will be entitled to receive a pension and retirement lump sum under this regulation from age 60 if—

- (a) the member leaves with at least 2 years' qualifying service, or
- (b) a transfer payment has been made to this Section of the scheme in respect of the member's rights under a personal pension scheme.

(2) The pension under this regulation will be calculated—

- (a) where it becomes payable by virtue of paragraph (3)(d) below, in accordance with paragraphs (2) to (4) of regulation E11, as if it were a pension under that regulation; and
- (b) in any other case, as described in regulation E1 as if it were a pension under that regulation,

and the retirement lump sum will be calculated as described in regulation E13.

(3) The member will become entitled to receive the pension and retirement lump sum under this regulation before age 60 if—

- (a) the member is in NHS employment and the Scottish Ministers are satisfied that the member is permanently incapable by reason of physical or mental infirmity of efficiently discharging the duties of that employment;
- (b) the member is not in NHS employment and the Scottish Ministers are satisfied that the member is suffering from mental or physical infirmity that makes the member permanently incapable of engaging in regular employment of like duration; or

- (c) some other benefit becomes payable to the member under regulations E2 to E11 (pensions for members);
- (d) the member—
  - (i) left pensionable employment after 30th March 2000;
  - (ii) has reached the normal minimum pension age or, where relevant, protected pension age; and
  - (iii) has applied to the Scottish Ministers for payment of the pension and retirement lump sum under this regulation.
- (4) Except in a case to which paragraph (5) applies—
  - (a) if the member is in NHS employment at the relevant time (whether with the same or another employing authority), the pension and lump sum on retirement will not become payable until the member leaves NHS employment or, if sooner—
    - (i) when the member attains the age of 70, if the member attains that age on or before 31st March 2008; or
    - (ii) when the member attains the age of 75, if the member attains the age of 70 on or after 1st April 2008; and
  - (b) the relevant time—
    - (i) in the case of a member to whom paragraph (3)(d) applies, is when the member makes the application referred to in head (iii) of that sub-paragraph; or
    - (ii) in any other case, when the member attains the age of 60.
- (5) Paragraph (4) may not apply where the NHS employment which the member is in when the member reaches age 60 is employment into which the member has been transferred as a result of a transfer of an undertaking to the employer.
- (6) Where a member receives a pension under paragraph (1) while being in the new employment to which paragraph (5) applies—
  - (a) the member's benefits in respect of any pensionable service in that new employment will be calculated without regard to any pensionable service in any earlier employment; and
  - (b) for the purposes of regulation C2 (meaning of “pensionable service”) and regulation D1(26) and (27) (contributions by members), the member's service in the earlier employment and in the new employment will be aggregated.
- (7) Subject to paragraph (8), where on or after the coming into force of these Regulations a member becomes entitled to a pension under paragraph (3)(a) or (b) of this regulation, the Scottish Ministers may discharge their liability for that pension by the payment of a lump sum of an amount consistent with—
  - (a) the contracting-out and preservation requirements of the 1993 Act; and
  - (b) the lump sum rule.
- (8) A lump sum payment under paragraph (7) may be made only if the Scottish Ministers are satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member and the member was in pensionable employment on or after the coming into force of these Regulations.
- (9) For the purpose of paragraph (6), the Scottish Ministers may require whatever medical evidence that they consider necessary.
- (10) The amount of the lump sum payable under paragraph (7) will be equal to 5 times the difference between yearly rate of the member's pension calculated in accordance with this regulation and the annual rate of the member's guaranteed minimum pension and the amount of the lump sum

shall be payable in addition to any retirement lump sum under regulation E13 (which shall not be subject to any reduction under regulation E14).

(11) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (3)(a), the Scottish Ministers must have regard to the factors in paragraph (13) and disregard the member's personal preferences for or against engaging in that employment.

(12) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (3)(b), the Scottish Ministers must have regard to the factors in paragraph (14) (no one of which is decisive) and disregard the factors in paragraph (15).

(13) The factors to be taken into account for paragraph (11) 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 the member's incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Scottish Ministers consider appropriate.

(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; and
- (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 the member's incapacity (irrespective of whether such rehabilitation is undergone) having 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 the member's incapacity (irrespective of whether such training is undergone) having 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.

(15) The factors to be disregarded for paragraph (12) are—

- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (16) 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) would be reasonable for the member to refuse;
- (b) would provide no benefit to restoring the member's capacity for—
  - (i) efficiently discharging the duties of the member's employment under paragraph (3)(a); or
  - (ii) regular employment of like duration under paragraph (3)(b), before the member reaches normal benefit age; and
- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;

[<sup>F6</sup>“NHS employment” does not include employment with an employing authority in respect of which a member is eligible to join—

- (a) the 2008 Section; or
- (b) the 2015 Scheme and that member's service in this Section does not qualify as, or has ceased to be, pensionable service to which paragraph 1(2)(i) and (ii) or paragraph 2(i) and (ii) of Schedule 7 (final salary link) to the 2013 Act applies;]

“permanently” means the period until normal benefit age; and

“regular employment of like duration” means—

- (a) in the case of a member who was a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's pensionable service as a non-GP provider immediately before that service ceased; and
- (b) in all other cases, where prior to leaving pensionable employment the member was employed—
  - (i) on a whole-time basis, regular employment on a whole-time basis; or
  - (ii) on a part-time basis, regular employment on a part-time basis,having regard to the number of hours, half days and sessions the member worked in that pensionable employment.

#### **Textual Amendments**

- F6** Words in reg. E12(16) substituted (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\), reg. 1\(b\), sch. 2 para. 4](#)

#### **Lump sum on retirement**

**E13.**—(1) Subject to paragraphs (3) and (4), each member shall, on becoming entitled to a pension under regulations E1 to E11, also become entitled to a retirement lump sum.

(2) Subject to regulation E14, the lump sum will be equal to 3 times the yearly rate of the pension [<sup>F7</sup>to which the member is entitled under regulations E1 to E11 (and in relation to which any additional pension purchased under regulations Q8, Q10 or Q11 is disregarded)].

(3) Where regulation E4(3) applies, the lump sum payable will be equal to the difference between—

- (a) three times the yearly rate of pension calculated in accordance with regulation E3(3)(a) (ill health pension on early retirement); and
- (b) three times the yearly rate of pension calculated in accordance with regulation E4(3)(b).

(4) Where a member [<sup>F8</sup>on becoming] entitled to a lump sum under this regulation [<sup>F9</sup>on or before 5th April 2011] has attained the age of 75—

- (a) the member will cease to be entitled to a lump sum; and
- (b) will instead be entitled to have the member's pension increased by such amount as the Scottish Ministers may, after taking advice from the scheme actuary, determine.

#### Textual Amendments

- F7** Words in reg. E13(2) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 6\(a\)](#)
- F8** Words in reg. E13(4) inserted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 6\(b\)\(i\)](#)
- F9** Words in reg. E13(4) inserted (with effect in accordance with reg. 1(8) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\), regs. 1\(2\), 6\(b\)\(ii\)](#)

#### Modifications etc. (not altering text)

- C1** Reg. E13 applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\), regs. 1\(b\), 25\(5\)](#)

### Deductions from lump sum

**E14.—(1)** In the case of a man whose pensionable service started before 25th March 1972 and who is or has been married, the lump sum will be reduced in accordance with whichever of paragraphs (2) to (4) is applicable except to the extent that the reduction has been off-set by payments made under regulation Q2 (right to buy an unreduced retirement lump sum).

(2) If the man is married, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(3) If the man's wife died, or the man was divorced from his wife, after 24th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service before 25th March 1972.

(4) If the man's wife died, or the man was divorced from his wife, before 25th March 1972, the reduction will be equal to 2 times the yearly rate of the part of the man's pension that is based on pensionable service up to and including the date of the death or divorce.

(5) If a female member has nominated her husband under regulation G8 to receive a dependent widower's pension on her death the lump sum will be reduced in accordance with regulation G8(6).

(6) If a female member has elected before 1st July 1989 to buy an increased widower's pension under regulation G9, the lump sum will be reduced in accordance with regulation G9(2).



(7) In any case where regulation E11 applies (early retirement pension (with actuarial reduction))

- (a) the pension referred to in paragraph (2) of regulation E13 means the pension before any reduction is made under regulation E11(2); and
- (b) the lump sum as calculated under paragraph (2) of regulation E13 will, except for any lump sum in respect of service calculated as a result of exercising the right to buy additional service under regulation Q1 or the right to buy an unreduced retirement lump sum under regulation Q2, be reduced by such amount as the Scottish Ministers will, after consulting the scheme actuary, determine.

### **Early leavers' entitlement to refund of contributions**

**E15.**—(1) A member who leaves pensionable employment without becoming entitled to an immediate pension or a preserved pension shall, subject to regulation R4(11), be entitled to receive a lump sum refund of the member's contributions, less tax at—

- (a) 20% (or at such other rate as applies under the 2004 Act) in respect of so much of the lump sum as does not exceed £10,800 (or such other amount as applies under the 2004 Act); and
- (b) 40% (or at such other rate as applies under the 2004 Act) in respect of so much (if any) of it as exceeds that limit.

(2) A member who wishes to take a refund of contributions must apply in writing to the Scottish Ministers.

(3) An application in writing referred to in paragraph (2) may be—

- (a) made or given by means of an electronic communication that is approved by the Scottish Ministers for that purpose;
- (b) given to the Scottish Ministers by a person other than the member.

(4) If the member's employment was contracted-out by reference to this Section of the scheme, the member (and the member's spouse or civil partner, if any) will remain entitled to a guaranteed minimum pension under this Section of the scheme, unless the Scottish Ministers discharge their liability to provide a guaranteed minimum pension by paying a contributions equivalent premium under section 55(2) of the 1993 Act <sup>M3</sup>.

(5) If the member's employment was contracted-out by reference to this Section of the scheme, the member (and the member's spouse or civil partner, if any) will remain entitled to a guaranteed minimum pension and section 9(2B) rights under this Section of the scheme, unless the Scottish Ministers discharge their liability in respect of that entitlement by paying a contributions equivalent premium under section 55(2) (payment of state scheme premiums on termination of certified status) of the 1993 Act.

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

(7) Where a member does not apply for a refund of contributions under paragraph (1) the Scottish Ministers may nonetheless make a refund of those contributions if the member does not return to pensionable employment within 12 months.

(8) A member shall not be entitled to a refund of contributions for any period of pensionable service in respect of which the Scottish Ministers have received a transfer payment in respect of the member's rights under a personal pension scheme.

(9) Where a refund of contributions is made, the Scottish Ministers are discharged from any obligation to provide benefits under this Section of the scheme except to any extent provided for under paragraph (4).

### Marginal Citations

**M3** Section 55 was amended by [S.I. 2005/2050](#), Schedule 1, paragraph 16.

### Payment of interest with refund of contributions

**E16.**—(1) Compound interest will be added to the refund of contributions under regulation E15 except where the employment was terminated by reason of misconduct or inefficiency or at the member's own request.

(2) Subject to paragraph (3), where compound interest is added to a refund of contributions, it will be calculated at the rate of 2 and one-half per cent a year, for the period starting on the 1st April after the contributions were paid and ending on the day the member leaves pensionable employment.

(3) In the case of any contributions paid under another enactment or scheme and included in a transfer payment to this Section of the scheme, interest for the period before the transfer payment was accepted will be calculated as described in the enactment or scheme from which the transfer payment was received.

### General option to exchange part of pension for lump sum

**E17.**—(1) This regulation applies to a member who is in pensionable employment on or after 1st April 2008.

(2) A member may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum, which must be an evenly divisible multiple of £12.

(3) If a member so opts, for every £1 by which the member's annual pension is reduced, the member is to be paid a lump sum of £12.

(4) An option under paragraph (2) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum will be exactly divisible by 12).

(5) In paragraph (4) “annual amount” in relation to a pension means the amount of the annual pension to which the member would be entitled under these regulations apart from the option, together with any increases payable under the Pensions (Increase) Act 1971 <sup>M4</sup>, calculated as at the time the payment would be first due.

(6) A member may not exchange pension for a lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of the 2004 Act <sup>M5</sup>.

(7) If the member has a guaranteed minimum under section 14 of the 1993 Act in relation to the whole or part of a pension, paragraph (2) only applies to so much of the pension as exceeds that guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in tables provided by the scheme actuary.

(8) Subject to paragraphs (9) and (10), the option under this regulation may only be exercised by giving notice in writing to the scheme administrator in the form required by the Scottish Ministers—

- (a) at the time of claiming the pension; or
- (b) before a later time specified in writing by the scheme administrator.

(9) If the pension is an ill health pension under regulation E3, the option under this regulation may only be exercised by giving notice in writing to the Scottish Ministers in the form required by the Scottish Ministers—

- (a) where the member is awarded—
  - (i) a lower tier pension under paragraph (3)(a) of that regulation, at the time of claiming that lower tier pension;

- (ii) an upper tier pension under paragraph (3)(b) of that regulation, at the time of claiming that upper tier pension; or
  - (b) before such later time as the Scottish Ministers specify in writing.
- (10) If the pension is an upper tier pension under regulation E4 to be paid in place of a lower tier pension under regulation E3, the option under this regulation may only be exercised—
  - (a) in relation to the difference between the lower tier pension that is replaced by the upper tier pension in accordance with regulation E4(3) and the upper tier pension to which the member becomes entitled under that regulation; and
  - (b) by giving notice in writing to the Scottish Ministers in the form required by the Scottish Ministers—
    - (i) at the time of award of the upper tier pension under that regulation; or
    - (ii) before such later time as the Scottish Ministers specify in writing.

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**Modifications etc. (not altering text)**

- C2** Reg. E17 applied (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), regs. 1(b), **25(5)**
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**Marginal Citations**

- M4** [1971 c.56.](#)
- M5** See in particular section 241 of and paragraph 1 of Schedule 29 to that Act.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, PART E.