
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 117

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

PART S

**MEMBERS WHO RETURN TO PENSIONABLE
EMPLOYMENT AFTER PENSION BECOMES PAYABLE**

Suspension of pension on return to NHS employment

S1.—(1) This regulation applies where a pension becomes payable to a member by virtue of regulation E1 (normal retirement pension), or E11 (early retirement pension (with actuarial reduction)) or a preserved pension is payable to the member in the circumstances described in E12, and, within one month of the date on which the pension becomes payable, the member enters NHS employment in which the member is engaged for more than 16 hours per week.

(2) A member to whom this regulation applies must inform the member's employer, and any other person that the Scottish Ministers may specify, that the member's pension under this Section of the scheme has become payable.

(3) Where this regulation applies the pension referred to in paragraph (1) shall, subject to paragraph (4), cease to be payable.

(4) The pension referred to in paragraph (1) becomes payable again—

(a) if the member for a period of 1 month—

- (i) ceases to be in any NHS employment; or
- (ii) reduces the number of hours worked to 16 or less; or

(b) if sooner than events described in sub-paragraph (a)—

- (i) from the date of the member's 70th birthday if the pension referred to in paragraph (1) becomes payable on or before 31st March 2008; or
- (ii) from the date of the member's 75th birthday if the pension referred to in paragraph (1) becomes payable on or after 1st April 2008.

(5) For the purposes of this regulation "NHS employment" includes employment with a National Health Service employing authority in England and Wales in respect of which regulations made under section 10 of the Superannuation Act 1972 apply and employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 and section 2 of the Superannuation Act 1984 (an Act of Tynwald) apply.

Reduction of pension on return to NHS employment

S2.—(1) Subject to paragraph (17), this regulation applies to a member—

- (a) until the member attains the age of 60;
- (b) who is in receipt of a relevant pension; and

- (c) who continues in, or subsequently returns to, NHS employment.
- (2) A relevant pension for the purpose of this regulation is a pension payable—
- (a) in respect of pensionable employment that ceased before 1st April 2008—
 - (i) under any of regulations E2 to E9; or
 - (ii) in accordance with regulation E12(2)(b);
 - (b) in respect of pensionable employment that ceased on or after 1st April 2008—
 - (i) any of regulations E2 to E6;
 - (ii) in accordance with regulation E7(2)(d)(ii); or
 - (iii) except where paragraph (c) applies, in accordance with E12(2)(b); or
 - (c) where the member is a special class officer—
 - (i) if regulation E1; or
 - (ii) if regulation R2(3)(b) applies to the member,
- in accordance with E12(2)(b).
- (3) A member to whom this regulation applies must—
- (a) inform the member's employer, and any other person that the Scottish Ministers may specify, that the member's pension under this Section of the scheme has become payable; and
 - (b) if requested to do so, provide any information (or authorise any other person to provide information) about the member's pay from NHS employment to the Scottish Ministers or to any other person the Scottish Ministers may specify.
- (4) If the relevant pension is one referred to in paragraph (2)(a) or (c)—
- (a) the member's pension will be reduced by the appropriate amount; and
 - (b) the appropriate amount is the difference between the member's previous pay and the aggregate of—
 - (i) the amount of the member's pension (including any amount by which that pension has been reduced pursuant to an election under regulation E17); and
 - (ii) the amount of the member's pay from NHS employment for the financial year after the pension becomes payable.
- (5) If the relevant pension is one referred to in paragraph (2)(b), the member's pension will be reduced in accordance with paragraphs (6) to (8) if amount A exceeds the member's previous pay.
- (6) The reduction in that member's pension will be equal to the difference between amount A and the member's previous pay, but will not exceed amount B.
- (7) For the purposes of paragraphs (5) and (6), amount A is the aggregate of—
- (a) the amount of the member's pay from NHS employment for any financial year after the pension becomes payable; and
 - (b) amount B.
- (8) For the purposes of paragraphs (6) and (7), amount B is the difference between—
- (a) the amount of the member's pension (including any amount by which that pension has been reduced pursuant to an election under regulation E13); and
 - (b) the amount of an actuarially reduced pension.
- (9) Subject to paragraph (10), a member's pension will be reduced as described in this regulation whether or not the member is included in this Section of the scheme in respect of the employment

after the member's pension becomes payable and regardless of any provision of these Regulations under which a member may be treated as having left NHS employment without actually leaving.

(10) A member's employment with an employer with whom an agreement has been made under section 89 of the National Health Service (Scotland) Act 1978(1) or in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(2) will not be treated as NHS employment, and the employer will not be treated as an employing authority, for the purposes of this regulation unless the member is included in this Section of the scheme in respect of that employment.

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

- (a) be increased in each financial year by the amount by which a pension beginning on the date on which the member's benefits under this Section of the scheme became payable (or, if earlier, the date the member left pensionable employment) would have been increased under Part I of the Pensions (Increase) Act 1971 at the 6th April falling in that financial year;
- (b) in the case of a person who holds a continuing employment (otherwise than as a practitioner), be increased by adding to it the amount of the annual rate of pay in respect of the continuing employment;
- (c) in the case of a person who is employed as a practitioner in continuing employment, be increased by adding to it the amount of the average of the annual amounts of uprated earnings as defined in paragraph 15 of Schedule 1 in respect of the last 3 financial years prior to the pension referred to in paragraph (1) becoming payable.

(12) For the purpose of calculating the reduction to be made under paragraph (4) in respect of any part of a financial year, the amount of the member's previous pay will be reduced proportionately.

(13) This paragraph applies to a person who held a part-time pensionable employment before the pension described in paragraph (1) became payable and who at any time during the period of that employment held a concurrent part-time pensionable employment.

(14) Where paragraph (13) applies and the concurrent part-time pensionable employment terminated before the pension described in paragraph (1) became payable, previous pay will be increased as described in paragraph (15).

(15) For the purpose of paragraph (14), previous pay will be increased by the amount of the member's pensionable pay or annual rate of pay whichever is the greater, that relates to the member's last year of concurrent pensionable employment increased in accordance with paragraph (11)(a).

(16) For the purposes of this regulation—

“actuarially reduced pension” means such annual amount as the Scottish Ministers determine, after consulting the scheme actuary, to be the amount that would have been payable to the member (regardless of whether the member has reached normal minimum pension age or protected minimum pension age) if the member had become entitled to a pension—

- (a) calculated in accordance with regulation E11 at the time the member became entitled to a pension mentioned in paragraph (2)(b) of this regulation; and
- (b) any increases to that amount payable under Part I of the Pensions (Increase) Act 1971 for that period;

“annual rate of pay” means that annual rate of so much of the member's pensionable pay immediately before the member's pension became payable as consisted of salary, wages or other regular payments of a fixed nature plus so much of the member's pensionable pay as

(1) 1978 c.29; section 89 replaced section 18 of the National Health Service (Amendment) Act 1949 (c.93).

(2) 1967 c.28; section 7 was amended by the Superannuation Act 1972, section 10(5), Schedule 6, paragraph 66 and Schedule 8; by the National Health Reorganisation Act 1973 (c.32), Schedule 5 and by the National Health Service (Scotland) Act 1978 (c.29), Schedule 16, paragraph 24.

consisted of fees and other regular payments not of a fixed nature as was payable during the last year before the member's pension became payable;

"continuing employment" means, for the purposes of paragraph (1), a pensionable employment which a person held immediately before the person became entitled to the said pension and which the person continues to hold whether it is pensionable or not;

"NHS employment" has the same meaning as in regulation S1(5);

"pension" means the amount of pension paid under this Section of the scheme for any financial year, plus any increases to that pension payable under Part I of the Pensions (Increase) Act 1971 for that period;

"pay" means the amount of pensionable pay received by the member during that financial year from NHS employment (or what would have been the member's pensionable pay had the member been in pensionable employment); and

"previous pay" means, subject to paragraphs (11) to (13), the greater of—

- (a) final year's pensionable pay; and
- (b) the annual rate of pay for any pensionable employment in respect of which the pension referred to in paragraph (1) becomes payable and which the member held before becoming entitled to that pension.

(17) This regulation does not apply to—

- (a) practice staff in respect of whom a pension is payable under any of regulations E1 to E12 who were employed by a registered medical practitioner on both 31st August 1997 and 1st September 1997 and who—
 - (i) were ineligible to rejoin this Section of the scheme with effect from 1st September 1997; or
 - (ii) made an election not to rejoin this Section of the scheme with effect from that date and who have not cancelled that election; and
- (b) members who are transferred into NHS employment as a result of a transfer of an undertaking to the employer.

Benefits in respect of pensionable employment after pension becomes payable under regulation E2

S3.—(1) This regulation applies to any member in respect of whom a pension becomes payable under regulation E2 (early retirement pension (ill-health)) and who subsequently enters pensionable employment.

(2) For the purposes of paragraphs (3) and (5), the member's "previous service" means the pensionable service in respect of which the member became entitled to receive a pension under regulation E2 and the member's "later service" means any pensionable service which accrues after the member becoming so entitled.

(3) Subject to paragraph (5), the member's benefits in respect of later service will be calculated without regard to the member's previous service.

(4) Where the member becomes entitled, under regulation E2, to a pension in respect of later service, the increase as described in regulation E2(3) will be in accordance with the proportioned increase described in regulation L1(3)(b).

(5) For the purposes of regulations D1(26) and (27) (contributions by members) and regulation C2(4) (meaning of "pensionable service") the member's previous service and later service will be aggregated.

Benefits in respect of pensionable employment after pension becomes payable under regulation E3

S4.—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E3 and who subsequently returns to pensionable employment.

(2) For the purposes of this regulation—

- (a) the member’s “previous service” means the pensionable service in respect of which the member became entitled to receive a pension under regulation E3; and
- (b) the member’s “later service” means any pensionable service which accrues after becoming so entitled.

(3) Subject to paragraph (4), the member’s benefits in respect of later service will be calculated without regard to the member’s previous service.

(4) For the purposes of regulation C2 (meaning of “pensionable service”) and regulation D1(26) and (27) (contributions by members), the member’s previous service and later service will be aggregated.

(5) Subject to the following provisions of this regulation, a member who—

- (a) is entitled to a lower tier pension in respect of the member’s previous service; and
- (b) satisfies the lower tier condition or, as the case may be, the upper tier condition in respect of the member’s later service,

is entitled to the benefits described in paragraph (6).

(6) Those benefits are—

- (a) the member’s original lower tier pension in respect of the member’s previous service; and
- (b) a lower tier pension or, as the case may be, an upper tier pension in respect of the member’s later service.

(7) A member—

- (a) to whom an upper tier pension is payable in place of a lower tier pension in respect of the member’s previous service in accordance with regulation E4(3); and
- (b) who satisfies the lower tier condition or, as the case may be the upper tier condition, in respect of the member’s later service,

is entitled to the following benefit.

(8) That benefit is the aggregate of—

- (a) an upper tier pension paid in accordance with regulation E4 in respect of the member’s previous service; and
- (b) a lower tier pension in respect of the member’s later service.

Benefits on death in pensionable employment after pension under regulation E2 becomes payable

S5.—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension (ill health)) who—

- (a) returns to pensionable employment after that pension under regulation E2 becomes payable; and
- (b) dies in pensionable employment.

(2) Subject to the modifications set out in paragraph (3) this regulation also applies to a member in respect of whom a pension is payable under regulation E2 (early retirement pension (ill health)) who—

- (a) returns to pensionable employment after that pension becomes payable; and
 - (b) on the day the member dies, is—
 - (i) under the age of 70;
 - (ii) in NHS employment;
 - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members) on or before 1st April 2008; and
 - (iv) except where regulation R4(4) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of later service.
- (3) The modifications referred to in paragraph (2) are—
- (a) in paragraph (8), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
 - (b) in paragraph (12), for “pensionable pay when the member died” substitute “final year’s pensionable pay”;
 - (c) in paragraph (13), for “the 6 months immediately following the member’s death” substitute “the 3 months immediately following the member’s death or the 6 months immediately following the member’s death if the member leaves a dependent child”;
 - (d) in paragraph (16), for “the 6 month period” substitute “the 3 month or, as the case may be, the 6 month period”; and
 - (e) in paragraph (17)—
 - (i) for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”; and
 - (ii) for “at that time” substitute “when the member died”.
- (4) Subject to the modifications set out in paragraph (5), this regulation also applies to a member in respect of whom a pension is payable under regulation E2 (early retirement on grounds of ill-health) who—
- (a) returns to pensionable employment after that pension becomes payable; and
 - (b) on the day the member dies, is—
 - (i) under the age of 75;
 - (ii) in NHS employment;
 - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members) on, or after, 2nd April 2008; and
 - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of the member’s later service.
- (5) The modifications referred to in paragraph (4) are—
- (a) in paragraph (8), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
 - (b) in paragraph (12), for “pensionable pay when the member died” substitute “final year’s pensionable pay”; and
 - (c) in paragraph (11)—
 - (i) for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”; and
 - (ii) for “at that time” substitute “when the member died”.
- (6) In this regulation, the member’s “previous service” and “later service” have the same meaning as in regulation S3(2).

(7) Where this regulation applies, a lump sum payable on the member's death will be payable in addition to any lump sum payable under regulation F2.

(8) The additional lump sum referred to in paragraph (7) will be equal to 5 times the amount of the pension that would have been payable to the member had the member left NHS employment and been entitled to a pension based on later service under regulation E1 (normal retirement pension) on the date of the member's death.

(9) If a member to whom this regulation applies leaves a surviving—

- (a) spouse or civil partner; or
- (b) nominated partner (if the member became entitled to the pension referred to in paragraph (1) on or after 1st April 2008),

the amount of pension payable to the surviving spouse, civil partner or nominated partner will be the aggregate of the amounts referred to in paragraphs (10) and (12).

(10) Subject to paragraph (14), the amount payable in respect of the member's previous service will be equal to the amount of the member's pension (if any) that was payable when the member died.

(11) The amount referred to in paragraph (10) will be paid for—

- (a) the 3 months immediately following the member's death; or
- (b) the 6 months immediately following the member's death if the member leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.

(12) The amount payable in respect of the member's later service will be equal to the rate of the member's pensionable pay when the member died.

(13) The amount referred to in paragraph (12) will be paid for the 6 months immediately following the member's death.

(14) Paragraph (10) will not apply if the aggregate of the spouse's, civil partner's or nominated partner's pension and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.

(15) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (11), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's previous service will be the amount determined in accordance with regulation G3 (widow's pension when member dies after pension becomes payable).

(16) Upon expiry of the 6 month period referred to in paragraph (13), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's later service will be equal to one-half of the rate of pension mentioned in paragraph (8) that would have been payable to the member.

(17) If a member to whom this regulation applies leaves a dependent child but—

- (a) does not leave a surviving spouse or civil partner; and
- (b) a nominated partner pension is not payable in respect of the member's later service,

the child allowance, for the 6 months immediately following the member's death, will be equal to the aggregate of the member's rate of pensionable pay when the member died and the amount of the member's pension (if any) that the member was receiving at that time.

(18) If a member to whom this regulation applies leaves a dependent child not dependent on a surviving spouse or civil partner and a nominated partner pension is not payable in respect of the member's later service, the child allowance, for the 6 months immediately following the member's death, will be the aggregate of the member's pensionable pay when the member died and the amount of the member's pension (if any) that the member was receiving at the time.

(19) Subject to paragraph (20), except where a child allowance is payable at the rate mentioned in paragraph (17) or (18), the child allowance in respect of the member's later service will—

- (a) be paid as a proportion of the rate of pension mentioned in paragraph (8) that would have been payable to the member; and
- (b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (child allowance when member dies in pensionable employment).

(20) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated his previous service and when the member died, any child allowance payable under these Regulations will be calculated according to—

- (a) regulation H4 (child allowance when member dies after pension becomes payable) in respect of the pension already in payment; and
- (b) regulation H3 in respect of later pensionable employment.

(21) If the aggregate of the pensionable service used in the calculation referred to in paragraph (20)(a) and that used in the calculation referred to in paragraph (20)(b) (“the member’s aggregated service”) is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(22) The amount of additional service referred to in paragraph (21) is the difference between 10 years pensionable service and the member’s aggregated service.

Benefits on death in pensionable employment after pension under regulation E3 becomes payable

S6.—(1) This regulation applies to a member in respect of whom a pension is payable under regulation E3 (ill health pension on early retirement) who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) dies in pensionable employment.

(2) Subject to the modifications set out in paragraph (3), this regulation also applies to a member in respect of whom a pension is payable under regulation E3 who—

- (a) returns to pensionable employment after that pension becomes payable; and
- (b) on the day the member dies, the member is—
 - (i) under the age of 75;
 - (ii) in NHS employment;
 - (iii) no longer required to pay contributions pursuant to regulation D1(26) or (27) (contributions by members); and
 - (iv) except where regulation R4(6) applies, not in receipt of a pension under any of regulations E1 to E11 in respect of the member’s later service.

(3) The modifications referred to in paragraph (2) are—

- (a) in paragraph (8), for “on the date of the member’s death” substitute “on the member’s last day of pensionable employment”;
- (b) in paragraphs (12), for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”;
- (c) in paragraph (17)(a), for “rate of pensionable pay when the member died” substitute “final year’s pensionable pay”; and
- (d) in paragraph (17)(b), for “at that time” substitute “when the member died”.

(4) For the purposes of this regulation, the member’s “previous service” means the pensionable service in respect of which the member became entitled to receive a lower or upper tier pension under regulation E3 and the member’s “later service” means any pensionable service which accrues after becoming so entitled.

(5) Subject to paragraph (6), the member's benefits in respect of later service will be calculated without regard to the member's previous service.

(6) For the purposes of regulation C2 and regulation D1(26) and (27), the member's previous service and later service will be aggregated.

(7) If this regulation applies, a lump sum payable on the member's death will be payable in addition to any lump sum payable under regulation F2 (lump sum when member dies after pension becomes payable).

(8) The additional lump sum referred to in paragraph (7) will be equal to 5 times the amount of the pension that would have been payable to the member had the member left NHS employment and been entitled to an upper tier pension based on the member's later service under regulation E3 on the date of the member's death.

(9) If a member to whom this regulation applies leaves a surviving spouse, civil partner or nominated partner, the amount of pension payable to the surviving spouse, civil partner or nominated partner will be the aggregate of the amounts referred to in paragraphs (10) and (12).

(10) Subject to paragraph (14), the amount payable in respect of the member's previous service will be equal to the amount of the member's pension (if any) that was payable when the member died.

(11) The amount referred to in paragraph (10) will be paid for—

- (a) the 3 months immediately following the member's death; or
- (b) the 6 months immediately following the member's death if the member leaves a dependent child who is dependent on the surviving spouse, civil partner or nominated partner.

(12) The amount payable in respect of the member's later service will be equal to the member's rate of pensionable pay when the member died.

(13) The amount referred to in paragraph (12) will be paid for the 6 months immediately following the member's death.

(14) Paragraph (10) will not apply if the aggregate of the spouse's, civil partner's or nominated partner's pension and any child allowance which would otherwise be payable under these Regulations in respect of the member's previous service is greater.

(15) Upon expiry of the 3 month or, as the case may be, 6 month period referred to in paragraph (11), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's previous service will be the amount determined in accordance with regulation G3 (widows pension when member dies after pension becomes payable).

(16) Upon expiry of the 6 month period referred to in paragraph (13), the amount of the surviving spouse's, civil partner's or nominated partner's pension in respect of the member's later service will be equal to one-half of the rate of pension that would have been payable to the member had the member become entitled to the pension mentioned in paragraph (8).

(17) If a member to whom this regulation applies leaves a dependent child but does not leave a surviving spouse, civil partner, or nominated partner, the child allowance, for the 6 months immediately following the member's death, will be equal to the aggregate of—

- (a) the member's rate of pensionable pay when the member died; and
- (b) the amount of the member's pension (if any) that the member was receiving at that time.

(18) Subject to paragraph (19), except where a child allowance is payable at the rate mentioned in paragraph (17), the child allowance in respect of the member's later service will—

- (a) be paid as a proportion of the rate of pension that would have been payable to the member had the member become entitled to the pension mentioned in paragraph (8); and
- (b) such proportion shall be determined in accordance with the circumstances as described in regulation H3 (child allowance when member dies in pensionable employment).

(19) If a member to whom this regulation applies leaves a child who was a dependent child both at the time the member terminated the member's previous service and when the member died, any child allowance payable under these Regulations will be calculated according to—

- (a) regulation H4 (child allowance when member dies after pension becomes payable) in respect of the pension already in payment; and
- (b) regulation H3 in respect of later pensionable employment.

(20) If the aggregate of the pensionable service used in the calculation referred to in paragraph (19)(a) and that used in the calculation referred to in paragraph (19)(b) ("the member's aggregated service") is less than 10 years, additional service will be allocated to the later period of pensionable employment for the purpose of the calculation under regulation H3.

(21) The amount of additional service referred to in paragraph (20) is the difference between 10 years pensionable service and the member's aggregated service.