
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 174

**The National Health Service Superannuation
Scheme (2008 Section) (Scotland) Regulations 2013**

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.G

RE-EMPLOYMENT AND REJOINING THE SCHEME

Preliminary

Application of Chapter 2.G

- 2.G.1.**—(1) Subject to paragraphs (4) to (7), this Chapter applies to persons who—
- (a) have been active members of this Section of the scheme in respect of their service in an employment;
 - (b) have ceased to be employed in that employment and have become deferred members or pensioner members of this Section of the scheme because of their rights in respect of that service;
 - (c) become employed again in an employment that qualifies them to belong to this Section of the scheme; and
 - (d) become active members of this Section of the scheme in respect of their service in that employment.
- (2) In this Part, a member to whom this Chapter applies is referred to as a “re-employed member”.
- (3) In this Chapter, in relation to any re-employed member—
- (a) the service referred to in paragraph (1)(a) is referred to as “the earlier service”; and
 - (b) the service referred to in paragraph (1)(d) is referred to as “the later service”.
- (4) This Chapter also applies to members who—
- (a) cease to be active members in respect of their service in an employment as the result of exercising the option under regulation 2.B.6 (opting out of this Section of the scheme); and
 - (b) later become active members in that or another employment,
- as it applies to members who cease to be employed in the employment in which they are active members, and paragraph (3) must be read accordingly.
- (5) This Chapter does not apply if the earlier service and the later service are treated as a single continuous period of pensionable service under regulation 2.A.5(6) (pensionable service: breaks in service).

Status: Point in time view as at 01/04/2021.

Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, CHAPTER 2.G. (See end of Document for details)

(6) Regulation 2.G.4 (effect of re-employment on upper tier ill health pensions) applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to this Section of the scheme.

(7) Regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking) applies whether or not the deferred member becomes an active member in the NHS employment in which the deferred member is re-employed.

(8) If a re-employed member ceases to be an active member again, this Chapter applies again in respect of the later service as if it were the earlier service (and so on).

General rule: separate treatment of service etc. except where unfavourable to member

General rule: separate treatment of service etc.

2.G.2.—(1) The general rule is that, in accordance with regulations 2.D.20 (dual capacity membership) and 2.E.26 (dual capacity membership: death benefits)—

- (a) the re-employed member's pensionable service in respect of the earlier service and the later service are treated separately; and
- (b) the re-employed member's reckonable pay in respect of the earlier service and the later service are determined separately.

(2) This regulation is subject to the provisions mentioned in regulations 2.D.20(4) and 2.E.26(5).

Exception to general rule in regulation 2.G.2

2.G.3.—(1) The general rule in regulation 2.G.2 (general rule: separate treatment of service etc.) does not apply if—

- (a) at the time that the member first becomes entitled to a pension under this Section of the scheme in respect of the earlier service or the later service; or
- (b) if it is earlier, at the time of the member's death,

in the opinion of the Scottish Ministers the benefits payable to or in respect of the member would be more valuable if that general rule were disregarded.

(2) Accordingly, in a case within paragraph (1)—

- (a) the member's pensionable service in respect of the earlier service and the later service is to be treated as one single continuous period;
- (b) the member's qualifying service in respect of the earlier service and the later service is to be treated as one single continuous period;
- (c) the member is not to be treated as a deferred member in respect of the earlier service; and
- (d) the member's reckonable pay in respect of the later period is to be determined by reference to the earlier period as well as the later period^{M1}.

(3) This regulation is subject to regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking).

Marginal Citations

M1 See regulation 2.A.11(8) (meaning of “reckonable pay”: general).

Special rules about re-employment of ill health pensioners

Effect of re-employment on upper tier ill health pensions

2.G.4.—(1) This regulation applies to a member who is entitled to an upper tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) in respect of earlier service and who—

- (a) did not opt to exchange that pension for a lump sum in accordance with regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum); and
- (b) has re-entered further employment (the “further employment”).

(2) Subject to paragraphs (3) and (4), the member ceases to be entitled to the upper tier ill health pension under regulation 2.D.8 and becomes entitled to a lower tier ill health pension under that regulation.

(3) In a case where the further employment is—

- (a) not NHS employment; and
- (b) an excluded employment,

paragraph (2) does not apply.

(4) In a case where the further employment is—

- (a) NHS employment; and
- (b) an excluded employment,

paragraph (2) does not apply during the initial period.

(5) As regards a further employment in NHS employment—

- (a) paragraph (2) applies from the first lower tier ill health pension payment date which falls after the first anniversary of the member's re-entry into NHS employment, whether or not that day is part of a continuous period of further NHS employment beginning with entry into that employment; and
- (b) the member may not rejoin this Section of the scheme in respect of that employment or any other NHS employment until after the first anniversary of the member's re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.

(6) For the purposes of this regulation—

- (a) an employment is an excluded employment at any time in a tax year, in relation to a member, if the member's earnings at that time for the purposes of national insurance from the employment and any other employments are such that the lower earnings limit for that year is not exceeded;
- (b) for the purposes of paragraph (2) an employment that has been an excluded employment in a tax year is not to be treated as ceasing to be such an employment until the first day following the end of the pension pay period for the upper tier ill health pension in which the limit described in sub-paragraph (a) is first exceeded; and
- (c) “the initial period” means the period of 12 months beginning with the day on which the member first enters an employment which results in this regulation applying.

(7) A member who, before attaining age 65, has ceased to be entitled to an upper tier ill health pension under paragraph (2), and who—

- (a) is in further NHS employment and ceases to be employed at all during the initial period; or

(b) is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which that further employment ceased to be an excluded employment,

may apply to the Scottish Ministers under this paragraph to become entitled to an upper tier ill health pension.

(8) An application under paragraph (7)—

(a) where paragraph (7)(a) applies, must—

- (i) state that the member has ceased to be employed at all;
- (ii) be made within the initial period; and
- (iii) be made in writing and be accompanied by evidence from a registered medical practitioner^{M2} that the member meets the condition in regulation 2.D.8(3)(a) (early retirement on ill health: active members and non-contributing members); and

(b) where paragraph (7)(b) applies, must—

- (i) state that the member has ceased to be employed at all;
- (ii) be made within a period of one year beginning with the day on which that employment ceased to be an excluded employment; and
- (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 2.D.8(3)(a).

(9) If on an application under paragraph (7) the Scottish Ministers are satisfied that the member meets the condition in regulation 2.D.8(3)(a), from the day following that on which the member's last employment ceased—

- (a) the member ceases to be entitled to the lower tier ill health pension under regulation 2.D.8; and
- (b) becomes entitled to an upper tier ill health pension under that regulation in respect of the earlier service.

(10) A member who falls within paragraph (1) must—

- (a) notify the Scottish Ministers if the member is in NHS employment at the end of the initial period;
- (b) notify the Scottish Ministers if the member's aggregate earnings for the purposes of national insurance from employments held in a tax year are such that the lower earnings limit for that year is exceeded; and
- (c) provide the Scottish Ministers or any other person specified by the Scottish Ministers with such further information as the Scottish Ministers specify concerning any further employment.

(11) This regulation is subject to regulation 2.G.5 (re-employed lower tier ill health pensioners).

Marginal Citations

M2 “Registered medical practitioner” is defined in Schedule 1 to the [Interpretation Act 1978 \(c.30\)](#), as amended by [S.I. 2002/3135](#).

Re-employed lower tier ill health pensioners

2.G.5.—(1) This regulation applies to re-employed members who are entitled to a lower tier ill health pension under regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) in respect of the earlier service.

(2) For the purposes of determining whether a member can count 45 years of pensionable service for any purpose, the earlier service and the later service are aggregated.

(3) If the re-employed member became entitled to a lower tier ill health pension for the earlier service, and on the termination of the later service the member becomes entitled to—

- (a) a lower tier ill health pension; or
- (b) an upper tier ill health pension,

under regulation 2.D.8 in respect of the later service, the re-employed member is entitled to the benefits set out in paragraph (4).

(4) Subject to paragraph (5), the benefits mentioned in paragraph (3) are—

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

(5) If the re-employed member—

- (a) ceases to be entitled to a lower tier ill health pension in respect of the earlier service;
- (b) becomes entitled to an upper tier ill health pension in respect of that earlier service in accordance with regulation 2.D.9(3) (re-assessment of entitlement to an ill health pension); and
- (c) on the termination of the later service, the member becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of that later service,

the re-employed member is entitled to the benefits set out in paragraph (6).

(6) The benefits mentioned in paragraph (5) are—

- (a) an upper tier ill health pension paid in accordance with regulation 2.D.9 in respect of the member's earlier service; and
- (b) a lower tier ill health pension in respect of the member's later service.

Special rule for members transferred out on transfer of undertaking

Deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking

2.G.6.—(1) This regulation applies if a re-employed member becomes entitled to a pension under regulation 2.D.1 (normal retirement pensions) or 2.D.4 (early payment of pension with actuarial reduction) by virtue of the application of regulation 2.D.13(2)(a) (exceptions to requirement that NHS employment must have ceased).

(2) Regulation 2.G.3 (exception to general rule) does not apply.

(3) Subject to paragraph (4), any benefits payable in respect of the later service are calculated without regard to pensionable service in respect of the earlier service.

(4) For the purposes of determining whether a member can count 45 years pensionable service for any purpose, the earlier service and the later service are aggregated.

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Changes to legislation:

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