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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 174**

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

**PART 3**

**BENEFITS FOR PRACTITIONERS, ETC.**

**CHAPTER 3.D**

**MEMBERS' RETIREMENT BENEFITS**

*Entitlement to pensions*

**Normal retirement pensions**

**3.D.1.**—(1) Subject to paragraph (2) and the following provisions of this Part, the general rule is that a member is entitled to a pension payable for life in respect of any period of pensionable service (“the relevant service”) if the member—

- (a) has reached age 65; and
- (b) either—
  - (i) has ceased to be employed in NHS employment and has claimed payment of the pension; or
  - (ii) will reach age 75 on the next day.

(2) A member to whom paragraph (1) applies is not entitled to a pension under this regulation unless—

- (a) the member is entitled to count at least two years of qualifying service in respect of the relevant service;
- (b) a transfer value payment has been accepted by this Section of the scheme during the relevant service under Chapter 3.F (transfers), otherwise than from an occupational pension scheme; or
- (c) the member is entitled to a pension under this regulation in respect of any previous period of pensionable service.

(3) A pension to which a member is entitled under this regulation becomes payable immediately the member becomes entitled to it.

(4) The—

- (a) amount of the annual pension payable to a practitioner member under this regulation (disregarding any additional pension) is 1.87% of the member's uprated earnings; and
- (b) member's uprated earnings are to be calculated by uprating the member's pensionable earnings by the amount of the annual increase due under the provisions of the Pensions

(Increase) Act 1971 <sup>M1</sup> and section 59 (increase of official pensions) of the Social Security Pensions Act 1975 <sup>M2</sup>, plus 1.5% annually.

(5) A claim referred to in paragraph (1)(b)(i) and made in accordance with regulation 3.J.2 (claims for benefits) takes effect from the date the claim is received by the Scottish Ministers.

(6) This regulation does not apply to pensions derived from pension credit rights.

(7) In this Chapter “NHS employment” includes employment with an employer in respect of whom a direction has been made under section 7 (extension of superannuation provisions of National Health Service Acts) of the Superannuation (Miscellaneous Provisions) Act 1967 <sup>M3</sup>.

(8) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.10.

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

**C1** Reg. 3.D.1(4) applied (with modifications) (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), **18(b)**

#### **Marginal Citations**

**M1** 1971 c.56.

**M2** 1970 c.60. Section 59 was amended by section 11 of, and paragraph 20 of Schedule 3 to, the [Social Security Act 1979 \(c.18\)](#), **paragraph 33** of Schedule 5, and Schedule 6, to the [Social Security Act 1985 \(c.53\)](#), **section 9(8)** of the [Social Security Act 1986 \(c.50\)](#), **sections 1(7)** and 5 of the [Pensions \(Miscellaneous Provisions\) Act 1990 \(c.7\)](#), **paragraph 34** of Schedule 2 to the [Social Security \(Consequential Provisions\) Act 1992 \(c.6\)](#) and paragraph 9(1) of Schedule 8 to the [Pensions Schemes Act 1993 \(c.48\)](#).

**M3** 1967 c.28. Section 7 was amended by S.I. 1968/1699, **section 10(5)** of, and paragraph 66 of Schedule 6 and Schedule 8 to, the [Superannuation Act 1972 \(c.11\)](#), **Schedule 5** to the [National Health Service Reorganisation Act 1973 \(c.32\)](#), **paragraph 24** of Schedule 16 to the [National Health Service \(Scotland\) Act 1978 \(c.29\)](#) and paragraph 29 of Schedule 1 to the [National Health Service \(Consequential Provisions\) Act 2006 \(c.43\)](#).

### **Pension credit members**

**3.D.2.**—(1) The general rule is that a pension credit member is entitled to a pension for life derived from the member's pension credit rights if the member has reached age 65 and has claimed payment of the pension.

(2) Subject to paragraph (5), the pension becomes payable—

- (a) when the pension credit member reaches age 65; or
- (b) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.

(3) The pension must be of such an amount that its value is equal to the member's pension credit, as calculated in accordance with regulations made under paragraph 5(b) (appropriate rights) of Schedule 5 to the 1999 Act.

(4) A claim under paragraph (1) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(5) A pension credit member who has not reached age 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—

- (a) reached age 55; and

- (b) claimed payment of the pension.
- (6) The amount of the annual pension under paragraph (5)—
  - (a) is first calculated as mentioned in paragraph (3); and
  - (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches age 65.
- (7) A claim under paragraph (5) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.

#### **Late payment of pension with actuarial increase**

**3.D.3.**—(1) This regulation applies if a member becomes entitled to immediate payment of pension under regulation 3.D.1 (normal retirement pensions) after reaching age 65.

(2) So much of the amount of the pension to which the member would otherwise be entitled under that regulation (before any commutation under regulation 3.D.10 (general option to exchange part of pension for lump sum)) as is attributable—

- (a) to the member's pensionable service before that age; and
- (b) to any contributions paid under regulations 3.C.6 or 3.C.9 before that age,

is increased.

(3) The amount of the increase must be calculated in accordance with guidance and tables provided by the scheme actuary to the Scottish Ministers for the purposes of this regulation.

(4) In preparing that guidance and those tables the scheme actuary must use such factors as the scheme actuary considers appropriate, having regard, in particular, to the period after reaching age 65 before the member becomes entitled to immediate payment of the pension and the life expectancy of the member.

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.20.

#### **Early payment of pension with actuarial reduction**

**3.D.4.**—(1) A member who has not reached age 65 is entitled to immediate payment of a reduced pension payable for life if the member—

- (a) has reached age 55;
- (b) meets the condition in regulation 3.D.1(2)(a) or (b) (normal retirement pensions);
- (c) has ceased to be employed in NHS employment; and
- (d) has claimed payment of the pension.

(2) The amount of the annual pension under this regulation—

- (a) is first calculated as mentioned in regulation 3.D.1(4) (and, if additional pension is payable, in accordance with regulation 3.C.12(2) (effect of payment of additional contributions) or 3.C.14(2) (effect of part payment of periodical contributions)); and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(3) A claim under paragraph (1) must be made by notice in writing in such form as the Scottish Ministers require and takes effect—

- (a) in the case of a deferred member, from the date specified in the claim as the date on which the pension is to become payable; and
  - (b) in the case of an active member or a non-contributing member, from the day immediately following the day on which the member ceased to be employed in NHS employment.
- (4) A member is not 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 (1), would be insufficient to meet their liability to provide a guaranteed minimum pension.
- (5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.

### **Partial retirement: members aged at least 55**

**3.D.5.—**(1) An active member or a non-contributing member may exercise an option under this regulation if—

- (a) the member has reached age 55 and—
    - (i) continues to be employed in the employment in which the member is an active member or a non-contributing member; or
    - (ii) where the member has more than one such employment, in at least one of those employments;
  - (b) the member would be entitled to a pension for life, by virtue of regulation 3.D.1(1)(b)(i) (normal retirement pensions), if the member had—
    - (i) reached age 65;
    - (ii) ceased to be so employed; and
    - (iii) claimed payment of the pension;
  - (c) the terms on which the member engages in the employment or employments referred to in sub-paragraph (a) change; and
  - (d) as a result of the change described in sub-paragraph (c), the member's engagement in such employment reduces to 90% or less of its pre-change level.
- (2) The option may only be exercised by notice in writing in such form as the Scottish Ministers require and must be accompanied by—
- (a) appropriate supporting evidence; and
  - (b) a statement in writing approved by the contracting Health Board or someone appointed on its behalf that the conditions in paragraph (1)(c) and (d) are met.
- (3) The option must specify—
- (a) the percentage of the member's pension (excluding any additional pension) in respect of which the member claims immediate payment (“the specified percentage”); and
  - (b) whether the member claims immediate payment of additional pension (if any).
- (4) A member who duly exercises the option under this regulation is entitled—
- (a) in the case of a member who has reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 3.D.1 (normal retirement pensions) if the member had ceased to be employed on the option day (disregarding any additional pension, but subject to any increase under regulation 3.D.3 (late payment of pension with actuarial increase));
  - (b) in the case of a member who has not reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 3.D.4 (early payment of pension with actuarial reduction) if the member had ceased to be employed on the option day (disregarding any additional pension); and

- (c) if the option specifies that the member claims immediate payment of additional pension, the additional pension, subject—
  - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 3.D.3 if the member had ceased to be employed on the option day; and
  - (ii) in a case within sub-paragraph (b), to a reduction of the same amount as would have been made in that pension under regulation 3.D.4 if the member had so ceased.
- (5) The specified percentage must be such that—
  - (a) the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation 3.D.10 (general option to exchange part of pension for lump sum) and disregarding any additional pension)—
    - (i) is not less than 20% of the pension that would have been payable if the member had ceased to be employed in all the member's employments at the end of the option day (disregarding any additional pension); and
    - (ii) taken together with any such increase to which the member becomes entitled as a result of the option (before any such commutation), is not less than 0.05% of the member's lifetime allowance on the option day;
  - (b) the percentage of the pension (other than additional pension) in respect of which the member does not require immediate payment is not less than 20% of the amount of the pension that would have been payable if the member had ceased to be employed in all the member's employments at the end of the option day (disregarding any additional pension).
- (6) The option under this regulation may only be exercised on no more than two occasions and the Scottish Ministers must take advice from the scheme actuary regarding—
  - (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);
  - (b) any benefits to be paid after the exercise of the second option; and
  - (c) the final payment.
- (7) In this regulation—
  - a member's "employment" means practitioner service together with any concurrent NHS employment and "terms of employment" must be construed accordingly;
  - "the option day" means the day before the reduction referred to in paragraph (1)(d) by virtue of which the option is exercisable takes effect;
  - "pension" means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of the member's employments and, in the case of practitioner services, the pensionable earnings taken into account when working out the pension will be drawn from the latest certificate referred to in regulation 3.J.14, or the latest scheme year's final pensionable earnings referred to in regulation 3.C.2 (members' contribution rate), and agreed with each relevant Health Board or someone appointed to act on its behalf or employer; and
  - "pre-change level" means the level of the member's engagement in the employment referred to in paragraph (1)(a) during the period of 12 months ending with the option day.
- (8) For the purposes of this Part, a member who has exercised the option under this regulation—
  - (a) is a pensioner member as respects the specified percentage of the pension to which the member is immediately entitled as a result of exercising the option and the percentage of the pensionable service that represents as respects which the member is an active member on the option day;

- (b) if the member continues in pensionable service after the option day, is an active member or a non-contributing member as respects—
    - (i) the pensionable service after that day in which the member continues; and
    - (ii) so much of the pensionable service as respects which the member is an active member or a non-contributing member on the option day as does not fall within sub-paragraph (a) (“the unspecified service”); and
  - (c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.
- (9) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.

### **Increase in level of engagement following exercise of option under regulation 3.D.5**

**3.D.6.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation 3.D.5 (partial retirement: members aged at least 55)—

- (a) during the period of 12 months beginning with the day after the option day, the terms on which the member holds the employment or employments referred to in regulation 3.D.5(1)(a) change again; and
  - (b) either—
    - (i) as a result, the level of the member's engagement in that employment or those employments is increased to more than 90% of the member's pre-change level; or
    - (ii) following an increase referred to in head (i), the member's engagement in that employment or those employments is reduced to <sup>F1</sup>... 90% of the member's engagement during the period of 12 months ending with the option day [<sup>F2</sup>or less].
- (2) In the circumstances referred to in—
- (a) paragraph (1)(b)(i), the amount of the member's pension mentioned in regulation 3.D.5(4) (a) and (b) must be abated to zero from the first pension day immediately following the day on which the level of the member's engagement increased; and
  - (b) paragraph (1)(b)(ii), subject to any adjustments in accordance with paragraph (3), the member is again entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a) and (b) of that regulation as from the first pension day immediately following the day on which the level of the member's engagement reduced.
- (3) Where paragraph (2)(b) applies, before restoring the payment of a pension the Scottish Ministers must have regard to the advice of the scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with paragraph (2)(a).
- (4) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further employment or employments in which the member is an active member or a non-contributing member of this Section of the scheme—
- (a) that event is to be treated as if the terms on which the member holds the employment or employments in respect of which the option was exercised (“the option employment”) had changed again; and
  - (b) the member's level of engagement in the further employment or employments is to be treated as an increase in the level of the member's engagement in the option employment or employments.
- (5) In this regulation, a member's “employment”, “the option day” and “pre-change level” have the same meanings as in regulation 3.D.5(7) (partial retirement: members aged at least 55).
- (6) Where—

- (a) a member's pension is abated in accordance with paragraph (2)(a) in the circumstances described in paragraph (1)(b); and
- (b) the member's level of engagement does not reduce in the manner described in paragraph (1)(c),

the pension is (in any event) payable by the Scottish Ministers when the member retires, or partially retires again, from pensionable employment or attains age 75 and in doing so the Scottish Ministers must—

- (i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation 3.D.10 (general option to exchange part of pension for lump sum); and
- (ii) take the advice of the scheme actuary.

#### Textual Amendments

- F1** Words in reg. 3.D.6(1)(b)(ii) omitted (28.6.2014) by virtue of [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **28(a)**
- F2** Words in reg. 3.D.6(1)(b)(ii) inserted (28.6.2014) by [The National Health Service Superannuation Scheme \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014 \(S.S.I. 2014/154\)](#), regs. 1(2), **28(b)**

#### Early retirement on ill health: active members and non-contributing members

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

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

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

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

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

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

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

*Status: Point in time view as at 01/10/2023.*

*Changes to legislation: There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, CHAPTER 3.D. (See end of Document for details)*

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

(13) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (3)(a), the Scottish Ministers must have regard to the factors in paragraph (15) (no one of which is decisive) and disregard the factors in paragraph (16).

(14) The factors to be taken into account for paragraph (12) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
- (d) any other matter which the Scottish Ministers consider appropriate.

(15) The factors to be taken into account for paragraph (13) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
  - (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
- (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having due regard to the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having due regard to the member's—
  - (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience; and
- (e) any other matter which the Scottish Ministers consider appropriate.

(16) The factors to be disregarded for paragraph (13) are—

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

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

“permanently” means—

- (a) the period until age 65; and
- (b) in the case of a 2008 Section Optant who, before joining this Section, was assessed by a medical adviser as being—
  - (i) permanently incapable of efficiently discharging the Optant's duties for the purposes of regulation E3(2)(b)(i) (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations, that Optant must be deemed to be permanently incapable of discharging the duties of the Optant's employment efficiently for the purposes of paragraph (2)(a); or
  - (ii) permanently incapable of regular employment of like duration for the purposes of regulation E3(2)(b)(ii) of the 2011 Regulations, that Optant must be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a); and

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

(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 3.K.10, 3.K.12 to 3.K.15 and 3.K.16.

(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.3.

### **Re-assessment of entitlement to an ill health pension determined under regulation 3.D.7**

**3.D.8.**—(1) This regulation applies if—

- (a) in the opinion of the Scottish Ministers a member meets the condition in regulation 3.D.7(2)(a) (early retirement on ill health: active members and non-contributing members); and
- (b) at the time the member is awarded a pension under that regulation the Scottish Ministers give the member notice in writing 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 meets the condition in regulation 3.D.7(3)(a) at the date of such a consideration.

(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Scottish Ministers for a review of whether the member subsequently meets the condition in regulation 3.D.7(3)(a) if—

- (a) the member makes the application in writing—
  - (i) within three years of the date of issue of the notice; or

- (ii) in the case of a member who engages in further NHS employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
  - (i) relating to whether the condition in regulation 3.D.7(3)(a) is satisfied at the date of the Scottish Ministers' review; and
  - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 3.D.7(2)(a);
  - (iii) no previous application for a review has been made under this paragraph; and
  - (iv) the member has not become entitled to an upper tier ill health pension in respect of any later service under regulation 3.G.5 (re-employed lower tier ill health pensioners).
- (3) If, after considering the further medical evidence provided by the member, the Scottish Ministers determine that the member meets the condition in regulation 3.D.7(3)(a), then as from the date on which that determination is made the member—
  - (a) ceases to be entitled to a lower tier ill health pension; and
  - (b) becomes entitled to an upper tier ill health pension under regulation 3.D.7, which is to be calculated as if paragraph (8) of that regulation included the words “from the date of the Scottish Ministers' determination under regulation 3.D.8” after “continued in service”.
- (4) In the case of a 2008 Section Optant, this regulation is subject to regulations 3.K.14 and 3.K.15.

### Early retirement on ill health: deferred members

- 3.D.9.**—(1) A deferred member who has not reached age 65 is entitled to immediate payment of a pension that is payable for life if—
- (a) in the opinion of the Scottish Ministers the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration; and
  - (b) the member has left that employment and claimed the pension.
- (2) A deferred member who is in NHS employment and has not reached age 65 is entitled to immediate payment of a pension that is payable for life if—
- (a) in the opinion of the Scottish Ministers the member—
    - (i) does not fall within paragraph (1)(a); and
    - (ii) suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member's employment efficiently; and
  - (b) the member has claimed the pension.
- (3) The amount of the annual pension payable under this regulation (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4) (normal retirement pensions).
- (4) For the purposes of determining whether a member is permanently incapable of discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii), the Scottish Ministers must have regard to the factors in paragraph (6) (no one of which is decisive) and disregard the member's personal preference for or against engaging in that employment.

(5) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (1)(a), the Scottish Ministers must have regard to the factors in paragraph (7) (no one of which is decisive) and disregard the factors in paragraph (8).

(6) The factors to be taken into account for paragraph (4) 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.

(7) The factors to be taken into account for paragraph (5) 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 due regard to the member's—
  - (i) mental capacity; and
  - (ii) physical capacity;
- (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having due regard to the member's—
  - (i) mental capacity;
  - (ii) physical capacity;
  - (iii) previous training; and
  - (iv) previous practical, professional and vocational experience; and
- (e) any other matter which the Scottish Ministers consider appropriate.

(8) The factors to be disregarded for paragraph (5) are—

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

(9) In 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) discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii); or
  - (ii) engaging in regular employment of like duration under paragraph (1)(a), before the member reaches age 65; or
- (c) would, through no fault on the part of the member, not be possible for the member to receive before the member reaches age 65;

“permanently” means the period until age 65; and

“regular employment of like duration” means such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's pensionable service as a practitioner immediately before that service ceased.

- (10) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.

#### *Options to exchange pension for lump sum*

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

**3.D.10.**—(1) A member (other than a pension credit member whose rights under the scheme are attributable to a disqualifying pension credit for the purpose of paragraph 2 of Schedule 29 to the 2004 Act) may opt to exchange part of a pension to which the member would otherwise be entitled for a lump sum.

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

(3) An option under paragraph (1) must relate to an annual amount of pension that is a whole number of pounds (and accordingly the lump sum must be exactly divisible by 12).

(4) In paragraphs (2) and (3) “annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Chapter apart from the option, together with any increases payable under the Pensions (Increase) Act 1971<sup>M4</sup>, calculated as at the time payment would first be due.

(5) A member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 (pension schemes etc.) of the 2004 Act (see, in particular, section 241 of, and paragraph 1 of Schedule 29 to, that Act).

(6) If the member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of the 1993 Act in relation to the whole or part of a pension, paragraph (1) 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.

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

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

(8) If the pension is an ill health pension under regulation 3.D.7 (early retirement on ill health: active members and non-contributing members), the option under this regulation may only be

exercised by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require—

- (a) where the member is awarded—
  - (i) a lower tier ill health pension under paragraph (2) of that regulation, at the time of claiming that lower tier ill health pension;
  - (ii) an upper tier ill health pension under paragraph (3) of that regulation, at the time of claiming that upper tier ill health pension; or
- (b) before such later time as the Scottish Ministers specify in writing.

(9) If the pension is an upper tier ill health pension under regulation 3.D.8 (re-assessment of entitlement to an ill health pension), in substitution for a lower tier ill health pension under regulation 3.D.7, the option under this regulation may only be exercised—

- (a) in relation to the difference between the lower tier ill health pension that ceases to be payable in accordance with regulation 3.D.8(3) and the upper tier ill health pension to which the member becomes entitled under that paragraph; and
- (b) by giving notice in writing to the Scottish Ministers in such form as the Scottish Ministers require—
  - (i) at the time of award of the upper tier ill health pension under that paragraph; or
  - (ii) before such later time as the Scottish Ministers specify in writing.

(10) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.8(4) (pension debit members) and regulation 3.K.10 (amount of pension and lump sum to be paid).

#### **Marginal Citations**

**M4** 1971 c.56.

### **Option for members in serious ill health to exchange whole pension for lump sum**

**3.D.11.**—(1) An active member or a non-contributing member, a deferred member or a pension credit member may opt to exchange a relevant pension for a lump sum if the Scottish Ministers are satisfied that the conditions for the lump sum to be a serious ill health lump sum for the purposes of the 2004 Act will be met (see paragraph 4 of Schedule 29 to that Act).

(2) In paragraph (1), “relevant pension” means a pension payable to that member under regulation—

- (a) 3.D.1 (normal retirement pensions);
- (b) 3.D.2 (pension credit members);
- (c) 3.D.7 (early retirement on ill health: active members and non-contributing members); or
- (d) 3.D.9 (early retirement on ill health: deferred members).

(3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 3.D.1 or 3.D.2, before or at the time when the pension becomes payable; and
- (b) in the case of a pension payable under regulation 3.D.7 or 3.D.9, before the pension becomes payable to the member.

(4) An active member or a non-contributing member aged 65 or over who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—

- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 3.D.10 if at the appropriate time the member had become entitled to a pension under regulation 3.D.1; and
  - (b) the total annual amount of the pension to which the member would have been entitled under regulation 3.D.1 after exercising that option, multiplied by 5.
- (5) A pension credit member who exercises the option is to be paid, as soon as reasonably practicable, an amount equal to the sum of—
- (a) the maximum lump sum (if any) to which the pension credit member could have become entitled on exercising the option under regulation 3.D.10 at the appropriate time; and
  - (b) the total annual amount of the pension to which the pension credit member is entitled under regulation 3.D.2 after exercising that option, multiplied by 5.
- (6) An active member or a non-contributing member entitled to a pension under regulation 3.D.7 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—
- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 3.D.10 at the appropriate time; and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 3.D.7 after exercising that option, multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 3.D.9 who exercises the option is to be paid, as soon as is reasonably practicable, an amount equal to the sum of—
- (a) the maximum lump sum to which the member could have become entitled on exercising the option under regulation 3.D.10 at the appropriate time; and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 3.D.9 after exercising that option, multiplied by 5.
- (8) In this regulation “the appropriate time” means—
- (a) for the purposes of paragraphs (4) and (5) the time when the option under this regulation is exercised; and
  - (b) for the purposes of paragraphs (6) and (7) the time payment of the pension under regulation 3.D.7 or, as the case may be, regulation 3.D.9 would otherwise first be due.
- (9) In this regulation references to the “annual amount” of a pension are to the amount of the annual pension to which the member would be entitled, together with any increases payable under the Pensions (Increase) Act 1971<sup>M5</sup>, calculated as at the appropriate time.
- (10) The option under this regulation may only be exercised by notice in writing to the Scottish Ministers in such form as the Scottish Ministers require.

**Marginal Citations**

M5 1971 c.56.

*Pension debit members and pension credit members*

**Reduction in pension debit member's benefits**

**3.D.12.**—(1) The benefits to which a pension debit member is entitled under this Chapter are subject to the reduction to be made under section 31 (reduction under pension sharing order following divorce or nullity of marriage) of the 1999 Act.

- (2) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.8(2).

### *Allocation*

#### **Election to allocate pension**

**3.D.13.**—(1) A member may elect to allocate a part of the annual amount of the member's pension under this Section of the scheme for the provision of a pension after the member's death to a single person who is the member's spouse or civil partner or another person who is the member's dependant within the meaning of paragraph 15 of Schedule 28 (registered pension schemes: authorised pensions - supplementary) to the 2004 Act if conditions A and B are met.

(2) Condition A is that the member has not become entitled to the payment of any pension under this Section of the scheme other than a pension payable under regulation 3.D.5 (partial retirement: members aged at least 55).

(3) Condition B is that in the case of a member who is not making the election on claiming the pension, the member—

- (a) has reached age 65 and has completed 45 years of pensionable service; or
- (b) the member has reached age 70.

(4) Any pension provided as a result of such an election must be calculated in accordance with tables prepared by the scheme actuary.

(5) The member may not elect to allocate more than one-third of the member's relevant annual pension.

(6) The member may not elect to allocate an amount that would result in—

- (a) the allocated annual pension exceeding the member's unallocated relevant annual pension;
- (b) the allocated pension exceeding such amount as the Scottish Ministers may determine for the purposes of this paragraph, after consultation with the scheme actuary, having regard to any restrictions imposed under Part 4 (pension schemes etc.) of the 2004 Act; or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 3.J.6 (commutation of small pensions) by way of commutation of a pension of that amount if the person entitled to the pension was not entitled to any other benefits under this Section of the scheme.

(7) The annual pension that is allocated must be an exact number of pounds.

(8) If a member—

- (a) elects to allocate a part of the member's pension under paragraph (1) after reaching age 65 and whilst in pensionable service; and
- (b) dies before the pension becomes payable,

for the purposes of paragraphs (5) to (7) the member is to be treated as entitled to the relevant pension to which the member would have been entitled if the member had become entitled to the pension immediately before death.

(9) In this regulation references to the member's relevant pension, in relation to any pension, are references to so much of the pension as would be payable if the member had exercised the option under regulation 3.D.10 (general option to exchange part of pension for lump sum) so as to obtain the maximum lump sum possible.

### Procedure for election under regulation 3.D.13

**3.D.14.**—(1) An election under regulation 3.D.13 (election to allocate pension) in respect of a member's pension must be made—

- (a) at the time when the member claims the pension or, if the member does not become entitled to the pension at that time, when the member does become so entitled; or
- (b) if the member is in pensionable service after reaching age 65, at any time after reaching that age and before reaching age 75.

(2) The election must be made by giving notice in writing to the Scottish Ministers.

(3) The notice must be in such form and contain such information as the Scottish Ministers require.

(4) Subject to paragraphs (6) and (7), an election under regulation 3.D.13 takes effect when it is accepted by the Scottish Ministers.

(5) The election may not be withdrawn, amended or revoked after it has taken effect.

(6) The election does not take effect if—

- (a) the member or the person in whose favour the election was made (“the beneficiary”) dies on or before the day on which the Scottish Ministers accept it; or
- (b) the Scottish Ministers are not satisfied that at the time when the election is made the member is in good health.

(7) The election is to be treated as not having taken effect if the beneficiary dies before the member is notified in writing that the Scottish Ministers have accepted the election.

### Effect of allocation

**3.D.15.**—(1) If an election under regulation 3.D.13 (election to allocate pension) for the allocation of a member's pension to another person (“the beneficiary”) has taken effect—

- (a) the member's pension is to be reduced accordingly (even if the beneficiary predeceases the member); and
- (b) if the beneficiary survives the member, on the member's death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 3.D.13.

(2) An allocation is disregarded for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither—

- (a) the member's spouse or civil partner on the date when the member becomes entitled to the pension or dies; nor
- (b) a dependant of the member for the purposes of paragraph 15(2) or (3) (meaning of “dependant”) of Schedule 28 to the 2004 Act when the member dies.

(3) References in this Part to pensions under this Chapter do not include pensions under this regulation except where the context otherwise requires.

(4) Any such pension is payable in addition to any pension payable to the beneficiary in respect of the member's death under Chapter 3.E (death benefits).

### *Dual capacity membership*

### Dual capacity membership

**3.D.16.**—(1) This paragraph applies if a member is—

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- (a) a member of this Section of the scheme of two or more of the kinds specified in paragraph (2);
  - (b) a pensioner member in respect of two or more pensions; or
  - (c) a deferred member in respect of two or more pensions.
- (2) The kinds of member are—
- (a) an active member or a non-contributing member;
  - (b) a deferred member;
  - (c) a pensioner member; and
  - (d) a pension credit member.
- (3) If paragraph (1) applies, the general rule is that—
- (a) benefits are payable to the member under this Chapter (or to any person to whom the member has opted to allocate pension under regulation 3.D.13 (election to allocate pension)) as if the member were two or more members of the kinds in question (so that two or more pensions or lump sums are payable in respect of the one member); and
  - (b) the amounts payable are to be determined accordingly.
- (4) The rule in paragraph (3) is subject to any indication to the contrary and, in particular, does not affect the interpretation of—
- (a) regulation 3.A.3(3) (meaning of “pensionable service”);
  - (b) regulation 3.D.5(8) (partial retirement: members aged at least 55) in a case where a member is both an active member or a non-contributing member and a pensioner member by virtue of that regulation;
  - (c) regulation 3.G.3 (exception to general rule);
  - (d) regulation 3.G.4 (effect of re-employment on upper tier ill health pensions);
  - (e) regulation 3.G.5 (re-employed lower tier ill health pensioners); or
  - (f) Chapter 3.H (abatement).
- (5) If a person who is a pension credit member is entitled to two or more pension credits—
- (a) benefits are payable to the person under this Section of the scheme (or to any person to whom the member has opted to allocate pension under regulation 3.D.13) as if the person were two or more persons, each being entitled to one of the pension credits (so that two or more pensions or lump sums are payable to the one pension credit member); and
  - (b) the amounts of those benefits are to be determined accordingly.

*Contracting-out obligations (GMPs, etc.)*

**Guaranteed minimum pensions etc.**

**3.D.17.—**(1) If a member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of the 1993 Act in relation to benefits under this Section of the scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under the 1993 Act in relation to such a member and such a member's rights under this Section of the scheme not to be met in the case of the member;
- (b) nothing in this Part prevents anything from being done which is necessary or expedient for the purposes of meeting such requirements in the case of the member; and
- (c) the following provisions are without prejudice to the generality of this paragraph.

(2) If apart from this rule—

- (a) no pension would be payable to the member under this Section of the scheme; or
- (b) the weekly rate of the pensions payable would be less than the guaranteed minimum,

a pension at a weekly rate equal to the guaranteed minimum is payable to the member for life from the date on which the member reaches State pension age or, as the case may be, pensions the aggregate weekly rate of which is equal to the guaranteed minimum are so payable.

(3) Subject to paragraph (4)—

- (a) if on reaching State pension age the member is still in employment (whether or not it is scheme employment); and
- (b) if it is not scheme employment, the member consents to a postponement of the member's entitlement under paragraph (2),

paragraph (2) does not apply until the member leaves employment.

(4) If the member continues in employment for a further 5 years after reaching State pension age and does not then leave employment, the member is entitled from the end of that period to so much of the member's pension under this Chapter as equals the member's guaranteed minimum (or, as the case may be, to so much of the member's pensions under this Chapter as together have a weekly rate equal to the member's guaranteed minimum), unless the member consents to a further postponement of the entitlement.

(5) If paragraph (3) or (4) applies, the amount of the guaranteed minimum to which the member is entitled under this rule is increased in accordance with section 15 (increase of guaranteed minimum where commencement of guaranteed minimum pension postponed) of the 1993 Act.

(6) If—

- (a) before State pension age the member becomes entitled to the immediate payment of a pension; and
- (b) the member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of the 1993 Act in relation to the whole or part of the pension,

the weekly rate of the pension, so far as attributable to that service, must not be less than that guaranteed minimum, multiplied by such factor as is indicated in tables provided by the scheme actuary for a person of the member's age and sex at the date on which the pension becomes payable.

(7) This paragraph applies if a person has ceased to be in employment that is contracted-out by reference to this Section of the scheme, and either—

- (a) all the person's rights to benefits under this Section of the scheme, except the person's rights in respect of the person's guaranteed minimum or rights under section 9(2B) of the 1993 Act (“the person's contracting-out rights”), have been transferred under Chapter 3.F (transfers); or
- (b) the person has no rights to benefits under this Section of the scheme apart from the person's contracting-out rights.

(8) If paragraph (7) applies—

- (a) from the date on which the person reaches State pension age the person is entitled to a pension payable for life at a weekly rate equal to the person's guaranteed minimum, if any; and
- (b) from the date on which the person reaches pension age the person is entitled to a pension in respect of the person's rights under section 9(2B) of the 1993 Act,

but a person falling within paragraph (7) is not to be regarded as a pensioner for the purposes of Chapter 3.E (death benefits).

(9) Paragraphs (2) to (8) do not apply to—

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- (a) a pension that is forfeited—
    - (i) as a result of a conviction for treason; or
    - (ii) in a case where an offence within regulation 3.J.8(2)(b) (forfeiture of rights to benefits) is committed;
  - (b) a pension that is commuted under regulation 3.D.11 (option for members in serious ill health to exchange whole pension for lump sum); or
  - (c) a pension that is commuted under regulation 3.J.6 (commutation of small pensions) where the conditions in [<sup>F3</sup>regulation 25 of the Occupational Pension Schemes (Schemes that were Contracted-out) (No. 2) Regulations 2015] are met,
- but if any other provision of this Section of the scheme is inconsistent with this rule, this rule prevails.

(10) For the purposes of this regulation—

- (a) “scheme employment”, in relation to a member, means employment in the employment by virtue of which the member is eligible for membership of this Section of the scheme; and
- (b) references to the amount of a pension are to its amount—
  - (i) disregarding any additional pension;
  - (ii) after the subtraction of any amount exchanged under regulation 3.D.10 (general option to exchange part of pension for lump sum); and
  - (iii) before the subtraction of any amount allocated under regulation 3.D.13 (election to allocate pension).

#### Textual Amendments

- F3** Words in [reg. 3.D.17\(9\)\(c\)](#) substituted (with effect in accordance with reg. 1(2)(f) of the amending S.S.I.) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), regs. 1(1), **38** (with reg. 53)

#### [<sup>F4</sup>Exceptions to requirement that NHS employment must have ceased

**3.D.18.—**(1) A member is not prevented from becoming entitled to a pension under regulation 3.D.1 in respect of pensionable service as regards which the member is a deferred member because of continuing in NHS employment if paragraph (2) applies.

- (2) This paragraph applies if the member—
  - (a) is in employment with an employing authority in respect of which the member is eligible to join the 2015 Scheme; and
  - (b) has a break of service under the 2015 Regulations that exceeds five years.]

#### Textual Amendments

- F4** [Reg. 3.D.18](#) inserted (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. 17**

**Status:**

Point in time view as at 01/10/2023.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, CHAPTER 3.D.