
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 174

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

PART 4

BENEFITS IN CASES OF MIXED SERVICE

CHAPTER 4.A

INTRODUCTION

Application of Part 4

Application of Part 4

4.A.1.—(1) This Part applies where a member has pensionable service under both Part 2 and Part 3.

(2) Where this Part applies, Part 2 and Part 3 are subject to the modifications provided in this Part.

(3) As regards a person to whom the general rule in regulation 2.G.2 (general rule: separate treatment of service etc.) or regulation 3.G.2 (general rule: separate treatment of service etc.) applies, this Part applies separately to benefits in respect of the earlier service and the later service (as defined in regulation 2.G.1 (application of Chapter 2.G) or regulation 3.G.1 (application of Chapter 3.G), as appropriate).

Preliminary

Interpretation: general

4.A.2. In this Part—

“the base amount” means the aggregate of the benefits that would be payable separately under Part 2 and Part 3 but for the operation of this Part;

“calculation method A” means the calculation method provided for in regulation 4.B.9;

“calculation method B” means the calculation method provided for in regulation 4.B.10;

“calculation method C” means the calculation method provided for in regulation 4.B.11;

“calculation method D” means the calculation method provided for in regulation 4.B.12;

“increment period” has the meaning given in regulation 4.B.12(2);

“officer” has the same meaning as in Part 2;

“practitioner” has the same meaning as in Part 3; and

“uprated earnings” has the same meaning as in Part 3.

CHAPTER 4.B
COMPARISON OF ENTITLEMENTS

Application of Chapter 4.B

Application of Chapter 4.B

4.B.1.—(1) This Chapter identifies the calculation method under which the benefits payable in respect of discrete periods of pensionable service as an officer are to be compared against the benefits that would have been payable had that service been service as a practitioner.

(2) The discrete periods of pensionable service as an officer that are subject to comparison are any periods of—

- (a) up to 10 years of pensionable service as an officer before first becoming a practitioner;
- (b) more than 10 years of pensionable service as an officer before first becoming a practitioner;
- (c) up to one year of employment as an officer after last ceasing to be a practitioner;
- (d) more than one year of employment as an officer after ceasing to be a practitioner;
- (e) less than one year of pensionable service as an officer concurrently with pensionable service as a practitioner; and
- (f) more than one year of pensionable service as an officer concurrently with pensionable service as a practitioner.

Officer service before practitioner service

Cases with up to 10 years of officer service

4.B.2.—(1) Where a member has not more than 10 years of pensionable service before first becoming a practitioner, the reference amount is the best of—

- (a) the amount determined by calculation method A;
- (b) the amount determined by calculation method B; and
- (c) where—
 - (i) the benefit is payable on retirement or death of the member; and
 - (ii) the condition is met,

the base amount.

(2) The condition mentioned in paragraph (1)(c)(ii) is that—

- (a) the amount of pension payable under Part 2 would be greater than the amount of pension payable under Part 3, where—
 - (i) any enhancement for the purposes of regulation 2.D.8 (early retirement on ill health: active members and non-contributing members) or 3.D.7 (early retirement on ill health: active members and non-contributing members); as appropriate, is ignored;
 - (ii) any additional pension is disregarded; and
 - (iii) any increase under the Pensions (Increase) Act 1971(1) is applied; and
- (b) the amount determined by calculation method B is less than the base amount.

Cases with more than 10 years of officer service

4.B.3. Where a member has more than 10 years of pensionable service before first becoming a practitioner, the reference amount is the better of—

- (a) the amount determined by calculation method A; and
- (b) the base amount.

Officer service after practitioner service

Cases with less than one year of officer service

4.B.4. Where a member has been employed as an officer for less than one year after last ceasing to be a practitioner, the reference amount is the amount determined by calculation method A.

Cases with more than one year of officer service

4.B.5. Where a member has been employed as an officer for one year or more after ceasing to be a practitioner, the reference amount is the better of—

- (a) the amount determined by calculation method C; and
- (b) the base amount.

Concurrent officer and practitioner service

Cases with less than one year of concurrent officer service

4.B.6. Where a member has less than one year of pensionable service as an officer concurrently with pensionable service as a practitioner, the reference amount is the amount determined by calculation method A.

Cases with more than one year of concurrent officer service

4.B.7. Where a member has one year or more of pensionable service as an officer concurrently with pensionable service as a practitioner, the reference amount is the better of—

- (a) the amount determined by calculation method A; and
- (b) the base amount.

Non-concurrent officer and practitioner service

Cases with non-concurrent officer service between periods of practitioner service

4.B.8. Where a member who, before commencing the member's final period of practitioner service, has service as an officer (whether that service as an officer consists of a separate period of such service or two or more such periods), and—

- (a) that officer service is preceded by an earlier period of practitioner service; and
- (b) some or all of the member's officer service is not concurrent with practitioner service,

the reference amount in respect of such part of that officer service that is not concurrent with practitioner service is the higher of—

- (i) the amount determined by calculation method D; and
- (ii) the base amount.

Calculation methods

Calculation method A

4.B.9.—(1) Calculation method A is the aggregate of—

- (a) the amount that would be payable under Part 3 if—
 - (i) the member’s discrete period of pensionable service as an officer were treated as pensionable service as a practitioner; and
 - (ii) the amount of pensionable pay received in respect of that officer service were treated as pensionable earnings as a practitioner for the respective period;
- (b) the amount payable under Part 2 (if any) if the member’s pensionable service as an officer were reduced by the discrete period of pensionable service as an officer in subparagraph (a); and
- (c) the amount payable under Part 3 but for the operation of this Part.

(2) Where paragraph (1) applies—

- (a) the member is entitled to count part of the period of officer service referred to in that paragraph as a result of a transfer-in under regulation 3.F.10 (acceptance of transfer value payments); and
- (b) the transfer-in is other than a transfer-in referred to in regulation 3.F.11(6) (calculation of increase to pensionable earnings as a result of a transfer-in),

for the purposes of any calculation under regulation 4.B.2(1)(a) or 4.B.3(a), the amount of the pensionable pay deemed to be received in respect of that part period of officer service must be calculated in accordance with regulation 3.F.11(2).

Calculation method B

4.B.10. Calculation method B is the aggregate of—

- (a) the amount payable under Part 3 if the member’s uprated earnings is increased by the formula—

$$UE \times \frac{LPS_o + LPS_p}{LPS_p}$$

where—

UE is the amount of the member’s uprated earnings;

LPS_o is the length of the member’s discrete period of pensionable service as an officer, expressed in days; and

LPS_p is the length of the member’s pensionable service as a practitioner, expressed in days; and

- (b) the amount payable under Part 2 (if any) if the member’s pensionable service as an officer were reduced by the discrete period of pensionable service as an officer in paragraph (a).

Calculation method C

4.B.11. Calculation method C is the aggregate of—

- (a) the amount that would be payable under Part 3 if the member’s pensionable earnings as a practitioner were uprated to the date of—
 - (i) cessation of the employment as an officer; or

- (ii) retirement,
whichever is the earlier; and
- (b) the amount payable under Part 2.

Calculation method D

4.B.12.—(1) Calculation method D is the aggregate of the amounts payable under paragraphs (2), (3) and (4).

(2) Subject to paragraph (5), the amounts payable under this paragraph are the additional amount that would be payable under Part 2 for the member's period, or periods, of non-concurrent officer service (described in regulation 4.B.8) in respect of the member's pension and any retirement lump sum payable—

- (a) as a result of the member exercising the option under regulation 3.D.10; and
- (b) in the case of a 2008 Section Optant, the lump sum paid to that Optant under regulation 3.K.10,

if those amounts were each subject to a 1.5% increase for each whole year or part of a year within the increment period.

(3) The amounts payable under this paragraph are the amounts that would be payable under Part 2 for the member's period, or periods, of non-concurrent officer service (described in regulation 4.B.8), were it not for the additional amounts calculated under paragraph (2).

(4) The amounts payable under this paragraph are the amounts payable under Chapter 3.D.

(5) For the purposes of paragraph (2)—

- (a) the increase referred to in that paragraph must—
 - (i) be applied in like manner and at the same intervals as an increase applied to a pension under the Pensions (Increase) Act 1971(2); and
 - (ii) be effective immediately before the pension and lump sum become payable with the member's benefits from practitioner service under Chapter 3.D; and
- (b) the increment period referred to in paragraph (2) must—
 - (i) begin with the day immediately following the day on which the officer service referred to in paragraph (2) ceased for the last time; and
 - (ii) end with the day immediately before the pension and retirement lump sum become payable with the member's benefits from practitioner service under Chapter 3.D.

CHAPTER 4.C

MODIFICATION OF BENEFITS

Members' retirement benefits

Top-up where reference amount greater than base amount

4.C.1.—(1) Where the reference amount calculated in any of regulations 4.B.2 (cases with up to 10 years of officer service) to 4.B.8 (cases with non-concurrent officer service between periods of practitioner service) is greater than the base amount, a top-up amount is payable.

(2) The top-up amount is equal to the aggregate of the amounts by which the reference amount is greater than the base amount in each of regulations 4.B.2 to 4.B.8 (where applicable).

(2) 1971 c.56.

(3) The top-up amount provided for under this regulation is to be treated as forming part of the member's pension for the purposes of increases payable under the Pensions (Increase) Act 1971(3), and is increased in the same manner to pensions payable under Parts 2 and 3.

Death benefits

Death benefits where member entitled to top-up

4.C.2.—(1) This regulation applies in relation to any benefit payable under Chapter 2.E (death benefit) and Chapter 3.E (death benefits) where the deceased member is (or would have been) entitled to a top up amount under regulation 4.C.1.

(2) In calculating the amount of the benefit payable under Chapter 2.E, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension must be treated as being the pension payable to the member had no benefit been payable in respect of any discrete period of pensionable service as an officer that gives rise to a top-up payment under regulation 4.C.1.

(3) In calculating the amount of the benefit payable under Chapter 3.E, where that benefit is expressed to be a percentage or fraction of a pension that was in payment at the date of death of a member, or a percentage or fraction of a pension to which a deceased member would have become entitled in a particular circumstance, that pension is to be treated as being the sum of—

- (a) the pension payable under Part 3; and
- (b) the top-up amount payable under regulation 4.C.1, inclusive of any increase payable under the Pensions (Increase) Act 1971 pursuant to paragraph (3) of that regulation.

CHAPTER 4.D

GENERAL MODIFICATIONS

Year service limit

Pensionable service limit

4.D.1.—(1) Subject to paragraph (3), in determining whether or not a member has reached 45 years of pensionable service for the purposes of regulation 2.A.3 (meaning of “pensionable service”), the amount of pensionable service accrued under Part 3 is included in the aggregate calculated under paragraph (1) of that regulation.

(2) Subject to paragraph (3), in determining whether or not a member has reached 45 years of pensionable service for the purposes of regulation 3.A.3 (meaning of “pensionable service”), the amount of pensionable service accrued under Part 2 is included in the aggregate calculated under paragraph (1) of that regulation.

(3) Where a person is concurrently in officer service and practitioner service in any year, that year counts as a single year for the purpose of calculating 45 years pensionable service.

- (4) Where the aggregate of pensionable service under Part 2 and Part 3 is in excess of 45 years—
 - (a) benefits under each of Part 2 and Part 3 are calculated by reference to such number of years as the Scottish Ministers determine;
 - (b) the aggregate of pensionable service under Part 2 and Part 3 determined in subparagraph (a) is 45 years; and

- (c) the Scottish Ministers must select the years by reference to which the benefits under each Part are to be calculated, selecting the years which produce the most favourable result to the member.

(5) Where a member is also a member of the part of the National Health Service superannuation scheme for Scotland, the rules of which are set out in the National Health Service Superannuation Scheme (Scotland) Regulations 2011(4), (“the 1995 Section”) any reference in this Part to “45 years” must be taken to be a reference to a shorter period determined by the formula—

$$SP = \text{years} - LPS$$

where—

SP is the shorter period, measured in years and days; and

LPS is the length of pensionable service (within the meaning of the National Health Service Superannuation Scheme (Scotland) Regulations 2011), measured in years and days, giving rise to membership of the 1995 Section and, in the case of a member of that Section of the scheme who has become entitled to a pension (including a preserved pension) under that Section of the scheme, including any period that was taken into account for the purpose of determining whether the member was entitled to that pension, or for the purpose of calculating the amount of that pension.

Applications, claims and notices

Applications, claims and notices

4.D.2. An application or claim made or a notice given for the purposes of a regulation listed in column 1 of the following table must be treated as an application or claim made or notice given for the purposes of the corresponding regulation in column 2 (and vice versa).

Table

<i>Column 1</i> <i>Regulation in Part 2</i>	<i>Column 2</i> <i>Regulation in Part 3</i>
2.D.1 (normal retirement pensions)	3.D.1
2.D.8 (early retirement on ill health: active and non-contributing members)	3.D.7
2.D.10 (early retirement on ill health: deferred members)	3.D.9
2.D.14 (general option to exchange part of pension for lump sum)	3.D.10
2.D.15 (option for members in serious ill health to exchange pension)	3.D.11
2.D.17 (election to allocate pension)	3.D.13
2.E.2 (meaning of “surviving nominated partner”)	3.E.2
2.E.22 (payment of lump sums or pension on death)	3.E.22
2.F.2 (applications for statements of entitlement)	3.F.2
2.F.3 (applications for transfer value payments: general)	3.F.3

(4) S.S.I. 2011/117, amended by S.S.I. 2011/173 and 364 and 2012/69 and 163.

Abatement

Reduction of pension

4.D.3.—(1) The pension payable under Part 3 is reduced in accordance with Chapter 3.H (abatement) but with the following modifications—

- (a) relevant income includes the enhancement amount determined under regulation 2.H.4(2) (meaning of “relevant income”); and
- (b) the member’s previous earnings in respect of the member’s practitioner service are increased by the amount of the member’s previous pay in respect of the member’s officer service.

(2) Where the reduction applied under the modified Part 3 is not the full amount of the excess determined under that modified Part, such part of the excess as has not given rise to a reduction in the old service pension in Part 3 is the excess for the purposes of regulation 2.H.3(3) (reduction of pension).