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STATUTORY INSTRUMENTS

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**2008 No. 653**

The National Health Service Pension Scheme Regulations 2008

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.D

MEMBERS' RETIREMENT BENEFITS

*Entitlement to pensions*

**2.D.8 Early retirement on ill-health (active members)**

(1) A pension payable under this regulation shall be known as an ill-health pension and may be paid at two different tiers known as a tier 1 ill-health pension and a tier 2 ill-health pension.

(2) An active member who has not reached the age of 65 and who has ceased to be employed in NHS employment is entitled to immediate payment of a tier 1 ill-health pension that is payable for life if—

- (a) in the opinion of the Secretary of State 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 2 years of qualifying service, and
- (d) the member has claimed the pension.

(3) An active member who has not reached the age of 65 is entitled to immediate payment of a 2 tier ill-health pension if—

- (a) in addition to meeting the condition in paragraph (2)(a), in the opinion of the Secretary of State 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 2 years of qualifying service, and
- (d) the member has claimed the pension.

(4) The annual amount of a tier 1 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4).

(5) The annual amount of a tier 2 ill-health pension (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4), but on the assumption that the member's pensionable service—

- (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;

- (b) is not increased by the enhancement period in the circumstances referred to in (a) if the member's pensionable service before and after the break is treated separately.

(6) In this regulation "the enhancement period" means two-thirds of the member's assumed pensionable service.

This is subject to paragraph (7).

(7) If the member's pensionable service includes any period which, apart from this paragraph would be calculated in accordance with regulation 2.A.3 (meaning of "pensionable service": part-time service), the enhancement period that would apply apart from this paragraph is reduced by multiplying it by the fraction—

$$\frac{TPSa}{TPSn}$$

where—

TPSa is the member's total pensionable service, applying that regulation in respect of any period in part-time employment, and

TPSn is the member's total pensionable service if that regulation were not applied.

(8) 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 the age of 65.

This is subject to paragraph (9).

(9) To the extent that any increase under paragraph (5) would cause a member's pensionable service to exceed the limit of 45 years provided for in regulation 2.A.2(3), the amount of any excess will be reduced accordingly.

(10) This regulation is subject to—

- (a) regulation 2.G.4 (effect of re-employment on tier 2 ill-health pensions), and  
(b) regulation 2.G.5 (re-employed tier 1 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 Secretary of State is satisfied that the member was dismissed because of the member's infirmity); or  
(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 has notified the Secretary of State in writing that the member's physical or mental infirmity is the reason for the termination of that employment and the Secretary of State is 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 Secretary of State shall have regard to the factors in paragraph (14) (no one of which shall be 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 Secretary of State shall have regard to the factors in paragraph (15) (no one of which shall be 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 his incapacity, irrespective of whether such rehabilitation is undergone; and
  - (d) any other matter which the Secretary of State considers 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; and
  - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
    - (i) mental capacity;
    - (ii) physical capacity;
    - (iii) previous training; and
    - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
  - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of his 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 his 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 Secretary of State considers 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) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers—
- (a) that it 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 the period until age 65; and
- “regular employment of like duration” means—
- (a) in the case of a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member’s current pensionable service as a non-GP provider; and
  - (b) in all other cases, where prior to retiring from employment that is pensionable the member was employed—
    - (i) on a whole-time basis, regular employment on a whole-time basis;
    - (ii) on a part-time basis, regular employment on a part-time basis,regard being had to the number of hours, half-days and sessions the member worked in that employment.