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STATUTORY INSTRUMENTS

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**2008 No. 654**

**The National Health Service Pension  
Scheme (Amendment) Regulations 2008**

**Insertion of new regulations E2A, E2B and E2C**

11. After regulation E2 insert—

**“Ill health pension on early retirement**

**E2A.**—(1) This regulation applies to a member who—

- (a) retires from pensionable employment on or after 1st April 2008;
- (b) did not submit Form AW33E (or such other form as the Secretary of State accepted) together with supporting medical evidence if not included in the form pursuant to regulation E2 which was received by the Secretary of State before 1st April 2008, and
- (c) is not in receipt of a pension under regulation E2.

(2) A member to whom this regulation applies who retires from pensionable employment before normal benefit age shall be entitled to a pension under this regulation if—

- (a) the member has at least 2 years qualifying service or qualifies for a pension under regulation E1; and
- (b) the member’s employment is terminated because of physical or mental infirmity as a result of which the member is—
  - (i) permanently incapable of efficiently discharging the duties of that employment (the “tier 1 condition”); or
  - (ii) permanently incapable of regular employment of like duration (the “tier 2 condition”) in addition to meeting the tier 1 condition.

(3) Subject to paragraph (4), the pension to which a member is entitled—

- (a) upon satisfaction of the tier 1 condition (“the tier 1 pension”), or
- (b) upon satisfaction of the tier 2 condition in addition to meeting the tier 1 condition (“the tier 2 pension”),

will be calculated as described in regulation E1.

(4) Subject to paragraphs (5) and (6), if the member meets the tier 2 condition in addition to meeting the tier 1 condition, the pensionable service on which the pension is based will be increased by two-thirds of the pensionable service the member could have completed had he stayed in pensionable employment until normal benefit age.

(5) If the member’s employment is terminated on or before 31st March 2016, the minimum amount by which the member’s pensionable service will be increased under paragraph (4) will be the lesser of—

- (a) 4 years pensionable service; and

(b) the pensionable service the member could have completed if the member had stayed in pensionable employment until normal benefit age.

(6) To the extent that any increase under paragraph (4) or (5) would cause a member's pensionable service to exceed the limit provided for in regulation C2(3) (meaning of pensionable service), the amount of any excess will be reduced accordingly.

(7) Subject to paragraph (8), where a member becomes entitled to a pension by virtue of meeting the tier 2 condition, the Secretary of State may discharge her liability for that pension by the payment of a lump sum of an amount consistent—

- (a) with the contracting-out and preservation requirements of the 1993 Act; and
- (b) the lump sum rule.

(8) A lump sum payment under paragraph (7) may be made only if the Secretary of State is satisfied that it is appropriate in all the circumstances having regard to the life expectancy of the member.

(9) For the purpose of paragraph (8), the Secretary of State may require whatever medical evidence that the Secretary of State considers necessary.

(10) The amount of the lump sum payable under paragraph (7)—

- (a) will be equal to 5 times the yearly rate of the member's pension (calculated in accordance with this regulation); and
- (b) shall be payable in addition to the lump sum on retirement payable under regulation E6 (which shall not be subject to any reduction under regulation E6(3)) and the lump sum in place of part of the pension payable under regulation E7.

(11) The employment of a member to whom a pension is payable under this regulation may be pensionable under the scheme if he is under age 50—

- (a) on the date the member returns to NHS employment if the member became entitled to receive a pension under a tier 1 condition on the day the member retired from pensionable employment; or
- (b) on the day after the protection period in regulation E2C(6)(b) ends if—
  - (i) the member became entitled to receive a pension under a tier 2 condition on the day the member retired from pensionable employment, and
  - (ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation; or
- (c) on the day after the protection period in regulation E2C(6)(b) ends—
  - (i) the member became entitled to receive a pension under a tier 2 condition in place of a pension under a tier 1 condition on the date of the Secretary of State's determination under regulation E2B, and
  - (ii) the Secretary of State did not discharge her liability for that pension by the payment of a lump sum in accordance with paragraph (7) of this regulation.

(12) For the purposes of calculating the amount of the lump sum payable under paragraph (10), the member will be treated as if the member had made an election under regulation E7 to receive the maximum amount of a further lump sum payable under that regulation.

(13) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member's employment under paragraph (2)(b)(i), the Secretary of State shall have regard to the factors in paragraph (15) (no one of which

shall be decisive) and disregard the member's personal preferences for or against engaging in that employment.

(14) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (2)(b)(ii), the Secretary of State shall have regard to the factors in paragraph (16) (no one of which shall be decisive) and disregard the factors in paragraph (17).

(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) 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 Secretary of State considers appropriate.

(16) The factors to be taken into account for paragraph (14) 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 the member's incapacity (irrespective of whether such rehabilitation is undergone) having 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 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.

(17) The factors to be disregarded for paragraph (14) are—

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

- (b) the geographical location of the member.
- (18) 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) efficiently discharging the duties of the member’s employment under paragraph (2)(b)(i), or
      - (ii) regular employment of like duration under paragraph (2)(b)(ii), before the member reaches normal benefit age; and
    - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;
  - “permanently” means the period until normal benefit age; 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..

**Re-assessment of ill health condition determined under regulation E2A**

**E2B.**—(1) This regulation applies to a member in receipt of a tier 1 pension under regulation E2A.

(2) A member to whom this regulation applies may ask the Secretary of State to consider whether the member subsequently meets the tier 2 condition if—

- (a) by notice in writing at the time of award of the pension, the Secretary of State informed the member 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 satisfies the tier 2 condition at the date of such a consideration;
- (b) within that three year period the member provides further medical evidence to the Secretary of State relating to the satisfaction of the tier 2 condition at the date of the Secretary of State’s consideration; and
- (c) that further medical evidence relates to the same physical or mental infirmity that qualified the member for the member’s tier 1 pension.

(3) If, after considering the further medical evidence provided by a member, the Secretary of State determines that the member satisfies the tier 2 condition—

- (a) the Secretary of State shall pay from the date of that determination a tier 2 pension under regulation E2A(2) in place of the tier 1 pension being paid to that member; and

- (b) that pension shall be calculated in accordance with paragraph (4) of regulation E2A and as if that paragraph included the words “from the date of the Secretary of State’s determination under regulation E2B” after “employment”.
- (4) Only one consideration of a member’s case may be undertaken under this regulation.

**Further employment after a benefit is paid under regulation E2A**

**E2C.**—(1) This regulation applies to a member who—

- (a) is in receipt of a tier 2 pension under regulation E2A (“the original pension”); and
- (b) enters into further employment.

(2) Such a member shall be paid a tier 1 pension (“a substitute pension”) in place of the original pension—

- (a) from the next substitute pension payment date following the day on which the member’s annual earnings from further employment (whether in the NHS or otherwise) in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year; or
- (b) in the case of a member who enters into further NHS employment, from the next substitute pension payment date following the first day on which the member is so employed which falls after the anniversary of the member’s entry into the further NHS employment (whether or not that day is part of a continuous period of further NHS employment beginning with the member’s entry into that employment),

if sooner.

(3) A member who is in receipt of a substitute pension may ask the Secretary of State to consider reinstating the original pension if—

- (a) the member is under normal benefit age;
- (b) the member makes such a request in writing and provides supporting medical evidence to the Secretary of State before the end of the protection period; and
- (c) the member’s further employment is terminated before the end of the protection period.

(4) If, after considering that evidence, the Secretary of State determines that the member again satisfies a tier 2 condition in respect of the member’s earlier employment, the Secretary of State shall recommence paying, from the day after the date that the further employment is terminated, the original pension in place of the substitute pension.

(5) A member to whom this regulation applies who is in receipt of a tier 2 pension must—

- (a) notify the Secretary of State immediately and in writing if either of the following apply—
  - (i) the member’s annual earnings in any tax year exceed the lower earnings limit for national insurance contributions applicable to that year;
  - (ii) the member is engaged in further NHS employment after the end of the protection period in paragraph (6)(b);
- (b) provide any other information in connection with the member’s earnings or further employment requested by the scheme administrator or any other person that the Secretary of State may specify.

(6) In this regulation “the protection period” means—

- (a) a period of one year beginning with the day on which the member’s annual earnings from further employment that is not NHS employment first exceed the lower earnings limit for national insurance contributions applicable to that year; or

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**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service Pension Scheme (Amendment) Regulations 2008, Section 11. (See end of Document for details)

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- (b) a period of one year beginning with the first day the member enters into further NHS employment.”.

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**Commencement Information**

**I1** Reg. 11 in force at 1.4.2008, see [reg. 1\(2\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Pension Scheme (Amendment) Regulations 2008, Section 11.