

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2008 No. 224**

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

**PART 2**

**BENEFITS FOR OFFICERS**

**CHAPTER 2.D**

**MEMBERS' RETIREMENT BENEFITS**

*Entitlement to pensions*

**Normal retirement pensions**

**2.D.1.**—(1) Subject to paragraph (2), regulation 2.D.13 (exceptions to requirement that NHS employment must have ceased) 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 the age of 65; and
- (b) either—
  - (i) has ceased to be employed in NHS employment and has claimed payment of the pension; or
  - (ii) has reached the age of 75.

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

- (a) the member is entitled to count at least 2 years of qualifying service in respect of the relevant service;
- (b) a transfer value payment has been accepted by the scheme during the relevant service under Chapter 2.F (transfers), otherwise than from an occupational pension scheme;
- (c) the member is entitled to a pension under this regulation in respect of any previous period of pensionable service; or
- (d) the member has reached the age of 65.

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

(4) The amount of the annual pension payable under this regulation (disregarding any additional pension) is given by the formula—

$$\frac{RP}{60} \times \frac{LRS}{365}$$

where—

RP is the member’s reckonable pay; and

LRS is the length of the member’s relevant service, expressed in days.

(5) A claim referred to in paragraph (1)(b)(i) and made in accordance with regulation 2.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 of the Superannuation (Miscellaneous Provisions) Act 1967(1).

### **Pension credit members**

**2.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 65 and has claimed payment of the pension.

(2) The pension becomes payable—

(a) when the pension credit member reaches 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.

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

**2.D.3.**—(1) This regulation applies if a member becomes entitled to immediate payment of pension under regulation 2.D.1 after reaching the age of 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 2.D.14) as is attributable—

(a) to the member’s pensionable service before that age; and

(b) to any contributions paid under regulations 2.C.8, 2.C.10 or 2.C.11 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 the age of 65 before the member becomes entitled to immediate payment of the pension and the life expectancy of the member.

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

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

---

(1) 1967 c. 28.

- (a) has reached the age of 55;
  - (b) meets the condition in regulation 2.D.1(2)(a) or (b);
  - (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 is calculated in the following way—
- (a) first, as mentioned in regulation 2.D.1(4) (and, if additional pension is payable, in accordance with regulation 2.C.14(2) or 2.C.16(2)); and
  - (b) second, 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, 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.

**Partial retirement (members aged at least 55)**

- 2.D.5.**—(1) An active member may exercise an option under this regulation if—
- (a) the member has reached the age of 55 and—
    - (i) continues to be employed in the employment in which the member is an active 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 2.D.1(1)(b)(i) and not regulation 2.D.1(1)(b)(ii), if the member had—
    - (i) reached the age of 65;
    - (ii) ceased to be so employed; and
    - (iii) claimed payment of the pension;
  - (c) the terms on which the member holds 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 annual rate of the member’s pensionable pay is reduced to 90 per cent or less of the amount of the member’s pensionable pay during the period of 12 months ending with the option day.
- (2) If the member was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(d), that paragraph applies as if the member’s pensionable pay during that period were—

$$PP \times \frac{365}{N}$$

where—

PP is the member's pensionable pay for the part of that period during which the member was an active member; and

N is the number of days in that period on which the member was an active member.

(3) The option may only be exercised by notice in writing in such form as the Scottish Ministers require and must be accompanied by a statement in writing by the employing authority or employing authorities, that the conditions in paragraph (1)(c) and (d) are met.

(4) 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).

(5) A member who duly exercises the option under this regulation is entitled—

- (a) in the case of a member who has reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.1 if the member had ceased to be employed on the option day (disregarding any additional pension, but subject to any increase under regulation 2.D.3);
- (b) in the case of a member who has not reached the age of 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 2.D.4 if the member had ceased to be employed on the option day (disregarding any additional pension); and
- (c) if the option specifies that 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 2.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 2.D.4 if the member had so ceased.

(6) 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 2.D.14 and disregarding any additional pension)—
  - (i) is not less than the amount of the pension payable by reference to 20 per cent of the member's pensionable service 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 per cent 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 the amount of the pension payable by reference to 20 per cent of the member's pensionable service at the end of the option day (disregarding any additional pension); and
- (c) that pensionable service referred to in sub-paragraph (b) is at least one year, within the meaning of regulation 2.A.3 (meaning of pensionable service: part-time service) in the case of a part-time member at the end of that date.

(7) The option under this regulation may only be exercised on no more than 2 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.
- (8) In this regulation “the option day” means the day before the reduction in pensionable pay by virtue of which the option is exercisable takes effect.
- (9) For the purposes of this Part, a member who has exercised the option under this regulation—
- (a) is a pensioner member as respects the pension to which the member is immediately entitled as a result of exercising the option and the specified percentage of the pensionable service that pension 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 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 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.

#### **Increase in pensionable pay following exercise of option under regulation 2.D.5**

**2.D.6.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation 2.D.5—

- (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 2.D.5(1)(a) change again; and
  - (b) either of the following is the case—
    - (i) as a result the member’s pensionable pay in that employment or those employments is increased to more than 90 per cent of the member’s pensionable pay during the period 12 months ending with the option day; or
    - (ii) following an increase referred to in head (i), the member’s pensionable pay in that employment or those employments is reduced to less than 90 per cent of the member’s pensionable pay during the period of 12 months ending with the option day.
- (2) In the circumstances referred to in—
- (a) paragraph (1)(b)(i), the amount of the member’s pension mentioned in regulation 2.D.5(5) (a) and (b) shall be abated to zero from the first pension day immediately following the day on which the level of the member’s pensionable pay increased;
  - (b) paragraph (1)(b)(ii), subject to any adjustments in accordance with sub paragraph (c), 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; and
  - (c) where sub paragraph (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 sub paragraph (a).

(3) If the member was not an active member during the whole of the period of 12 months mentioned in paragraph (1)(b)(i), that paragraph applies as if the member's pensionable pay during that period were—

$$PP \times \frac{365}{N}$$

where—

PP is the member's pensionable pay for the part of that period during which the member was an active member; and

N is the number of days in that period on which the member was an active member.

(4) If, in the opinion of the Scottish Ministers, had the terms and conditions of the member's employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b)(i)—

(a) paragraph (2)(a) does not apply; and

(b) this regulation applies as if paragraph (1)(b)(i) referred to that annual rate instead of the actual annual rate.

(5) 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 of the scheme—

(a) that event is treated as if the terms on which the member holds the employment in respect of which the option was exercised ("the option employment") had changed again; and

(b) the member's pensionable pay in the further employment is treated as an increase in the member's pay in the option employment.

(6) In this regulation "the option day" has the same meaning as regulation 2.D.5(8).

#### **Application of regulations 2.D.5 and 2.D.6 where concurrent part-time employments held**

**2.D.7.**—(1) This regulation provides for the application of regulations 2.D.5 and 2.D.6 if a person is an active member in 2 or more part-time employments held concurrently on the option day.

(2) Those regulations apply in relation to each of the employments as if it were the only employment held by the member on that day, but subject to the following modifications.

(3) In regulation 2.D.5(1) for sub-paragraph (d) substitute—

“(d) as a result the sum of the annual rate of the member's pensionable pay in that employment and every other employment held by the member on the option day is reduced to 90 per cent or less of the sum of—

(i) the member's pensionable pay in the employment during the period of 12 months ending with the option day; and

(ii) the member's pensionable pay during that period in every other employment held by the member on the option day.”.

(4) In regulation 2.D.5(2)—

(a) after “paragraph (1)(d)” insert “in the employment or any other employment referred to in that paragraph”; and

(b) after “that period” insert “in that employment”.

(5) In regulation 2.D.6(1) for sub-paragraph (b) substitute—

- “(b) as a result the annual rate of the member’s pensionable pay in that employment is increased to more than 90 per cent of the sum of–
- (i) the member’s pensionable pay in the employment during the period of 12 months ending with the option day; and
  - (ii) the member’s pensionable pay during that period in every other employment held by the member on the option day.”.

(6) In regulation 2.D.6(3)–

- (a) after “paragraph (1)(b)(i)” insert “in the employment or any other employment referred to in that paragraph”; and
- (b) after “that period” insert “in that employment”.

(7) For regulation 2.D.6(4) substitute–

“(4) If, in the opinion of the Scottish Ministers, had the terms and conditions of the member’s employment or any other such employment remained the same after the option day (apart from pensionable pay), the annual rate of pensionable pay for the employment as at the time of the change mentioned in paragraph (1)(a) would have exceeded the annual rate referred to in paragraph (1)(b) for that employment–

- (a) paragraph (2)(a) does not apply; and
- (b) this regulation applies as if paragraph (1)(b) referred to that annual rate instead of the actual annual rate.”.

(8) Where–

- (a) a member’s pension is abated in accordance with regulation 2.D.6(2)(a), in the circumstances described in regulation 2.D.6(1)(b); and
- (b) the member’s pensionable pay does not reduce in the manner described in regulation 2.D.6(1)(c),

the pension will (in any event) be payable by the Scottish Ministers when the member retires, or partially retires again, from pensionable employment or attains the age of 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 2.D.14; and
- (ii) take advice of the scheme actuary.

### **Early retirement on ill health (active members)**

**2.D.8.—**(1) A pension payable under this regulation known as an ill health pension and may be paid at 2 different tiers known as a lower tier ill health pension and an upper tier 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 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 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 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 any 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 lower tier ill health pension (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4).
- (5) The annual amount of an upper tier 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; and
  - (b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if the member's pensionable service before and after the break is treated separately.
- (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 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) 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 the age of 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 2.A.3(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 upper tier ill health pensions); and
  - (b) regulation 2.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 has 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 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;
- (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 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 Scottish Ministers consider–
- (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 normal benefit age; 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 normal benefit age;
- “regular employment of like duration” means–
- (d) in the case of a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member’s current pensionable service as a non-GP provider; and
  - (e) 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; and
    - (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 entitlement to an ill health pension determined under regulation 2.D.8**

- 2.D.9.**—(1) This regulation applies if–
- (a) in the opinion of the Scottish Ministers a member meets the condition in regulation 2.D.8(2)(a); 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 3 years commencing with the date of that award to determine whether the member meets the condition in regulation 2.D.8(3)(a) at the date of such a consideration.
- (2) A member to whom such a notice under paragraph (1)(b) has been given may apply to the Scottish Ministers for a review of whether he or she subsequently meets the condition in regulation 2.D.8(3)(a) if–
- (a) the member makes the application in writing within 3 years of the date of issue of the notice;
  - (b) the request is accompanied by further written medical evidence–

- (i) relating to whether the condition in regulation 2.D.8(3)(a) is satisfied at the date of the Scottish Minister's review; and
  - (ii) that relates to the same physical or mental infirmity as a result of which the member met the condition in regulation 2.D.8(2)(a); and
  - (c) no previous application has been made under this paragraph.
- (3) If, after considering the further medical evidence provided by the member, the Scottish Ministers determine that the member meets the condition in Regulation 2.D.8(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 2.D.8, which is to be calculated as if regulation 2.D.8(8) included the words “from the date of the Scottish Ministers' determination under regulation 2.D.9” after “continued in service”.

### **Early retirement on ill health (deferred members)**

**2.D.10.**—(1) A deferred member who has not reached the age of 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 incapable of engaging in regular employment of like duration; and
- (b) the member has claimed the pension.

(2) A deferred member who is in NHS employment and has not reached the age of 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 left that employment and claimed the pension.

(3) The amount of the annual pension payable under this regulation (disregarding any additional pension) is calculated as specified in regulation 2.D.1(4).

(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;
    - (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) 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 Scottish Ministers consider–
- (a) that it would be reasonable for the member to refuse; or
  - (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) 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 member who was a non-GP provider, such employment as the Scottish Ministers consider would involve a similar level of engagement to the member’s pensionable service as a non-GP provider immediately before that service ceased; and
- (b) in all other cases, where prior to leaving employment that was pensionable the member was employed—
  - (i) on a whole-time basis, regular employment on a whole-time basis; or
  - (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.

### **Early retirement on termination of employment by employing authority**

**2.D.11.**—(1) A member other than a non-GP provider who has reached the age of 55, but not 65, is entitled to a pension payable for life if—

- (a) the employment in which the member is an active member is terminated by the member’s employing authority and the member has ceased to be employed in NHS employment;
- (b) the member has 2 years of qualifying service;
- (c) the member’s employing authority certifies that the member—
  - (i) has at least 2 years of continuous employment determined in accordance with any terms and conditions applying to the employment; and
  - (ii) has not unreasonably refused to seek suitable alternative employment or accept an offer of such employment;
- (d) the Scottish Ministers certify that the member’s employment is terminated—
  - (i) by reason of redundancy; or
  - (ii) in the interests of the efficiency of the service in which the member is employed; and
- (e) the member has claimed payment of the pension.

(2) A certificate under paragraph (1)(d)(ii) may only be given with the agreement of the employing authority.

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

(4) Subject to paragraph (6), the amount of the annual pension payable under this regulation (disregarding any additional pension) is given by the formula—

$$\frac{RP}{60} \times \frac{LPS}{365}$$

where—

RP is the member’s reckonable pay; and

LPS is the length of the member’s pensionable service, expressed in days.

(5) A claim under paragraph (1)(e)—

- (a) must be made in writing to the Scottish Ministers within 6 months of the employment terminating; and
- (b) must contain such information as the Scottish Ministers may from time to time require.

## (6) If–

- (a) the member has received a related payment in respect of the cessation of the employment;
- (b) the terms and conditions relating to the employment require that payment to be reduced to take account of the additional contributions the employing authority must make to the Scottish Ministers in accordance with regulation 2.C.6 (contributions by employing authorities: members becoming entitled to pension under regulation 2.D.11); and
- (c) that payment has not been so reduced,

the amount of that payment (or, if there is more than one such payment, the aggregate amount of those payments) is deducted from the amount of the pension.

## (7) In paragraph (6) “related payment” means–

- (a) a redundancy payment under the Employment Rights Act 1996(2); or
- (b) a corresponding payment under the arrangement of the Whitley Councils for the Health Services of Great Britain.

## (8) This regulation does not apply to practice staff.

**Option to have periods of service treated separately where pay is reduced****2.D.12.**—(1) This regulation applies if–

- (a) the reckonable pay of an active member who has at least 2 years of qualifying service is reduced; and
- (b) the reduction occurs in circumstances specified in paragraph (2).

## (2) The circumstances are that–

- (a) the member is transferred from one employment to another;
- (b) the member leaves one employment and takes up another in circumstances approved by the Scottish Ministers for the purposes of this regulation; or
- (c) the member’s duties change while the member continues in the same employment, otherwise than at the member’s request or as a result of something done by the member.

(3) The member may opt to be treated for the purposes of the scheme in accordance with this regulation as follows–

- (a) the member is treated as a deferred member of the scheme as respects the earlier service; and
- (b) if the member is an active member of the scheme in the later service, for the purposes of this Chapter the member is treated as respects the later service as if the member became an active member for the first time on the day that service began.

(4) But nothing in paragraph (3) prevents the member’s earlier service and later service counting as a single continuous period for the purposes of regulation 2.A.5 (qualifying service).

## (5) If the member’s pensionable service is to be increased under regulation 2.D.8(5)–

- (a) the member’s pensionable service will count as a continuous period for the purposes of calculating to what extent the pensionable service on which the pension is based should be increased; and
- (b) the increase will apply only in respect of the pension attributable to the later service.

(6) If a member has duly exercised the option under this regulation, the member is treated as mentioned in paragraph (3) (but subject to paragraphs (4) and (5)) unless paragraph (7) applies.

---

(2) 1996 c. 18.

(7) This paragraph applies if—

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

in the opinion of the Scottish Ministers the benefits payable to or in respect of the member would be more valuable if the option and any other options exercised by the member under this regulation were disregarded.

(8) 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 before the end of the period of 3 months beginning with the first day of the later service.

(9) In this regulation—

“the earlier service” means—

- (a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has left; and
- (b) in the case of a change of circumstances within paragraph (2)(c), the service in the employment before the change in the member’s duties took effect; and

“the later service” means—

- (a) in the case of a change of circumstances within paragraph (2)(a) or (b), the service in the employment that the member has begun; and
- (b) in the case of a change of circumstances within paragraph (2)(c), the service in the employment after the change in the member’s duties took effect.

### **Exceptions to requirement that NHS employment must have ceased**

**2.D.13.**—(1) A member is not prevented from becoming entitled to a pension under regulation 2.D.1 in respect of relevant service because of continuing in NHS employment if paragraph (2) applies.

(2) This paragraph applies if—

- (a) the member is an active member in the NHS employment and that employment is employment into which the member has been transferred as a result of a transfer of an undertaking to the employing authority; and
- (b) the member is a deferred member in respect of pensionable service that ceased before the member commenced the employment referred to in sub-paragraph (a).

(3) In paragraph (1), “relevant service” means the pensionable service referred to in paragraph (2) (b) in respect of which the member is a deferred member.

(4) A member is not prevented from becoming entitled to a pension under regulation 2.D.11 in respect of pensionable service in an employment (“the old employment”) because of continuing in NHS employment if paragraph (5) applies.

(5) This paragraph applies if—

- (a) before the termination of the old employment the member held 2 or more NHS employments concurrently; and
- (b) the member elected to take benefits under regulation 2.D.11 only in respect of the old employment and to continue to accrue rights to benefits in respect of any continuing employments in which the member is an active member.

(6) For the effect of a pension becoming payable as a result of paragraph (2) applying, see—

- (a) Chapter 2.G (re-employment and rejoining the scheme); and

- (b) Chapter 2.H (abatement).

*Options to exchange pension for lump sum*

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

**2.D.14.**—(1) A member other than a pension credit member 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 will 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, 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) 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.

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

**2.D.15.**—(1) An active 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) For the purposes of paragraph (1), a “relevant pension” is a pension payable to that member under regulation—

- (a) 2.D.1 (normal retirement pensions);
- (b) 2.D.2 (pension credit members' pensions);
- (c) 2.D.8 (early payment of pensions: ill health); or
- (d) 2.D.10 (early retirement on ill health (deferred members)).

(3) The option may only be exercised—

- (a) in the case of a pension payable under regulation 2.D.1 or 2.D.2, before or at the time when the pension becomes payable; and
- (b) in the case of a pension payable under regulation 2.D.8 or 2.D.10, before the pension becomes payable to the member.

(4) An active member aged 65 or over who exercises the option is to be paid, as soon as is reasonably practicable and before reaching the age of 75, 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 2.D.14 if at the appropriate time the member had become entitled to a pension under regulation 2.D.1; and
  - (b) the total annual amount of the pension to which the member would have been entitled under regulation 2.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 is reasonably practicable and before reaching the age of 75, an amount equal to the annual amount of the pension to which the member would have been entitled under regulation 2.D.2 after exercising that option, multiplied by 5.
- (6) An active member entitled to a pension under regulation 2.D.8 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 2.D.14 at the appropriate time; and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.8 after exercising that option, multiplied by 5.
- (7) A deferred member entitled to a pension under regulation 2.D.10 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 2.D.14 at the appropriate time; and
  - (b) the total annual amount of the pension to which the member is entitled under regulation 2.D.10 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 2.D.8 or, as the case may be, 2.D.10 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, 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.

*Pension debit members and pension credit members*

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

**2.D.16.**—(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 of benefit) of the 1999 Act.

**Pension credit member’s rights**

**2.D.17.**—(1) If regulation 7(5) of the Pension Sharing (Pension Credit Benefit) Regulations 2000<sup>(3)</sup> (early or deferred retirement) applies, the Scottish Ministers must be reasonably satisfied that the requirements of that regulation have been met.

---

(3) S.I.2000/1054.

(2) Section 68A(2)(a) of the 1993 Act (safeguarded rights)(4) applies to the safeguarded rights of pension credit members.

(3) Safeguarded rights must be identified as being the safeguarded percentage of the pension credit rights.

### *Allocation*

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

**2.D.18.**—(1) A member may elect to allocate a part of the annual amount of the member's pension under the scheme for the provision of a pension after the member's death for 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 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 the scheme other than a pension payable under regulation 2.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 the age of 65 and has completed 45 years of pensionable service; or
- (b) the member has reached the age of 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 of the Finance Act 2004; or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 2.J.5 (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 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 the age of 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 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) References in this regulation 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 2.D.14 (general option to exchange part of pension for lump sum) so as to obtain the maximum lump sum possible.

---

(4) Section 68A was amended by the Pensions Act 2007 (c. 22), Schedule 4, paragraph 27.

## **Procedure for election under regulation 2.D.18**

**2.D.19.**—(1) An election under regulation 2.D.18 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 the age of 65, at any time after reaching that age and before reaching the age of 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 2.D.18 takes effect once it has been 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 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**

**2.D.20.**—(1) If an election under regulation 2.D.18 for the allocation of a member’s pension to another person (“the beneficiary”) has taken effect—

- (a) the member’s pension is 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 2.D.18.

(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) 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 2.E (death benefits) of this Part.

### *Dual capacity membership*

## **Dual capacity membership**

**2.D.21.**—(1) This paragraph applies if a member is—

- (a) a member of the scheme of 2 or more of the kinds specified in paragraph (2);
  - (b) a pensioner member in respect of 2 or more pensions; or
  - (c) a deferred member in respect of 2 or more pensions.
- (2) The kinds of member are—
- (a) an active 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 2.D.18) as if the member were 2 or more members of the kinds in question (so that 2 or more pensions or lump sums are payable in respect of the one member); and
  - (b) the amounts payable are 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 2.A.2(3) (meaning of pensionable service);
  - (b) regulation 2.D.5(9) in a case where a member is both an active member and a pensioner member by virtue of that regulation;
  - (c) regulation 2.D.12;
  - (d) regulation 2.G.3 (exception to general rule in 2.G.2 about separate treatment of pay and service);
  - (e) regulation 2.G.4 (effect of re-employment on upper tier ill health pensions);
  - (f) regulation 2.G.5 (re-employed lower tier ill health pensioners);
  - (g) regulation 2.G.6 (deferred pension becoming payable during NHS re-employment as a result of a transfer of undertaking); or
  - (h) Chapter 2.H (abatement).
- (5) If a person who is a pension credit member is entitled to 2 or more pension credits—
- (a) benefits are payable to the person under the scheme (or to any person to whom the member has opted to allocate pension under regulation 2.D.18) as if the person were 2 or more persons, each being entitled to one of the pension credits (so that 2 or more pensions or lump sums are payable to the one pension credit member); and
  - (b) the amounts of those benefits are determined accordingly.

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

**Guaranteed minimum pensions etc.**

**2.D.22.**—(1) If a member has a guaranteed minimum under section 14 (earner's guaranteed minimum) of the 1993 Act in relation to benefits under the scheme—

- (a) nothing in this Part permits or requires anything that would cause requirements made by or under that Act in relation to such a member and such a member's rights under 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 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), if—

(a) on reaching State pension age the member is still in employment (whether or not it is scheme employment); and

(b) 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 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 the scheme, and either—

(a) all the person's rights to benefits under 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 2.F (transfers); or

(b) the person has no rights to benefits under 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 his or her 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 his or her 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 2.E (death benefits).

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

- (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 2.J.7(2)(b) (forfeiture of rights to benefits) is committed;
- (b) a pension that is commuted under regulation 2.D.15 (option for members in serious ill health to exchange whole pension for lump sum); or
- (c) a pension that is commuted under regulation 2.J.5 (commutation of small pensions) where the conditions in regulation 60 of the Occupational Pension Schemes (Contracting out) Regulations 1996<sup>(5)</sup> are met,

but if any other provision of the scheme is inconsistent with this rule, this rule prevails.

(10) In 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 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 2.D.14 (general option to exchange part of pension for lump sum); and
  - (iii) before the subtraction of any amount allocated under regulation 2.D.18 (election to allocate pension).