SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

The National Health Service Pension Scheme (Scotland) Regulations 2008

PART 2

BENEFITS FOR OFFICERS

CHAPTER 2.H

ABATEMENT

Application of Chapter 2.H

2.H.1.—(1) This Chapter applies if–

(a) a person who is a pensioner member of the scheme is employed in NHS employment;

(b) the person's employment is not employment to which the person was transferred as a result of a transfer of an undertaking to the person's employer;

(c) the person's pension is a pension under–

(i) regulation 2.D.8 (early retirement on ill health: active members);

(ii) regulation 2.D.10 (early retirement on ill health: deferred members); or

(iii) regulation 2.D.11(1)(d)(ii) (early retirement on termination of employment by employing authority) in a case where the Scottish Ministers certified that the member's employment was terminated in the interests of the efficiency of the service in which the member was employed; and

(d) the person has not reached the age of 65.

(2) In this Chapter "NHS employment" includes–

(a) employment with an employer in respect of whom a direction has been made under section 7 of the Superannuation (Miscellaneous Provisions) Act 1967(**1**);

(b) employment to which regulations made under section 10 of the Superannuation Act 1972(**2**) and having effect in England and apply;

(c) employment to which regulations made under Article 12 of the Superannuation (Northern Ireland) Order 1972 apply(**3**);

(d) employment to which a scheme made under section 2 of the Superannuation Act 1984 (an Act of Tynwald) applies(**4**); and

(e) employment with an employer with whom an agreement has been made under section 235 of the 2006 Act.

(**1**) 1967 c. 28.
(**2**) 1972 c. 11.
(**3**) S.I.1972/1073.
(**4**) 1984 c. 8 (Tynwald).

(3) In this Chapter, subject to paragraph (4)–

(a) a person to whom this Chapter applies is referred to as an "employed pensioner";

(b) the pension to which the employed pensioner is entitled is referred to as the "old service pension";

(c) the employment in respect of which the pension is payable is referred to as the "the old employment"; and

(d) the employment in which the employed pensioner is employed is referred to as the "new employment".

(4) This Chapter applies whether or not the person is an active member of the scheme in the new employment.

(5) For the purposes of this Chapter, so much of any pension as is additional pension is ignored.

Information

2.H.2.—(1) A person who becomes an employed pensioner must inform–

(a) the person's employer in the new employment; and

(b) any other person that the Scottish Ministers may specify,

that the old service pension is payable.

(2) A person who ceases to be an employed pensioner in one new employment and becomes an employed pensioner in another new employment must inform–

(a) the person's employer in the other new employment; and

(b) any other person that the Scottish Ministers may specify,

that the old service pension is payable.

Reduction of pension

2.H.3.—(1) If the condition in paragraph (2) is met, the amount of the old service pension for any scheme year is reduced.

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed pensioner's previous pay.

(3) The amount of the reduction under paragraph (1) is equal to that excess but cannot exceed the enhancement amount.

(4) For the meaning of "relevant income" and "enhancement amount" see regulation 2.H.4.

(5) For the meaning of "previous pay" see regulation 2.H.5.

(6) If the employed pensioner holds the new employment for only part of any scheme year, this regulation applies as if–

(a) the reference in paragraph (2) to the employed pensioner's relevant income were a reference to the appropriate proportion of that income; and

(b) the reference in that paragraph to the employed pensioner's previous pay were a reference to the appropriate proportion of that pay.

(7) In paragraph (6) "the appropriate proportion" means the same proportion as the period during which the new employment is held bears to the whole scheme year.

(8) If the member has a guaranteed minimum pension in relation to the old service pension, nothing in this regulation requires the reduction of the old service pension below the amount of the member's guaranteed minimum pension in relation to it.

Meaning of "relevant income"

2.H.4.—(1) The employed pensioner's relevant income for a scheme year is the aggregate of–

(a) the amount of pay received by the employed pensioner during that year from the new employment (assuming, in any case where the employed pensioner is not an active member of the scheme in the new employment, that the employed pensioner is such a member); and

(b) the enhancement amount in relation to the old service pension.

(2) The enhancement amount, in relation to an old service pension, is the difference between–

(a) the amount of that pension for that year; and

(b) the amount that that pension would have been had it been payable under regulation 2.D.4 (early payment of pension with actuarial reduction).

(3) If the old service pension is payable under regulation 2.D.8 (early retirement on ill health (active members)) or 2.D.10 (early retirement on ill health (deferred members) to an employed pensioner who had not reached the age of 55 at the time when entitlement to the pension arose, for the purposes of paragraph (2)(b)–

(a) the fact that entitlement to a pension under regulation 2.D.4 depends on reaching that age is ignored; and

(b) the employed person's actual age at the relevant time is taken into account in determining the reduction to be made under regulation 2.D.4(2).

(4) If the old service pension is an upper tier ill health pension, for the purposes of paragraph (2)(b), only the employed pensioner's actual pensionable service at the time when entitlement to the pension arose is taken into account in determining the amount that would have been payable under regulation 2.D.4.

(5) If the employed pensioner exercised the option under regulation 2.D.14 (general option to exchange part of pension for lump sum) in relation to the old service pension, the resulting reduction in the pension is ignored for the purposes of this regulation.

(6) If the employed pensioner exercised the option under regulation 2.D.18 (election to allocate pension) in relation to the old service pension, the resulting reduction in the pension is taken into account for the purposes of this regulation.

(7) References in this regulation to the amount of a pension for any scheme year are to its amount for that year after any increases payable under the Pensions (Increase) Act 1971(a)(**5**) in respect of that pension, including the increases that would have been payable in respect of any amount not paid because of a reduction ignored under paragraph (5).

Meaning of "previous pay": general

2.H.5.—(1) For the purposes of this Chapter and subject to paragraph (3) and regulation 2.H.6, an employed pensioner's previous pay is the greater of–

(a) the employed pensioner's reckonable pay for the purposes of the old service pension; and

(b) the annual rate of pay for the old employment at the time it ceased.

(2) In this regulation "annual rate of pay" means the sum of–

(a) the annual rate of so much of the employed pensioner's pensionable pay immediately before the old service pension became payable as consisted of–

(i) salary;

(ii) wages; or

(**5**) 1971 c.56.

(iii) other regular payments,

of a fixed nature; and

(b) so much of any fees and other regular payments not of a fixed nature as–

(i) was payable to the employed pensioner during the period of 12 months ending with the day the old employment ceased; and

(ii) formed part of the employed pensioner's pensionable pay.

(3) Subject to regulation 2.H.6 (members with concurrent employments), the amount to be taken as the employed pensioner's previous pay must be adjusted in each scheme year for inflation.

(4) The reference in paragraph (3) to adjusting that amount in each scheme year for inflation is to increasing it by the same amount as that by which an annual pension equal to that amount would have been increased under the Pensions (Increase) Act 1971 at 6th April in that scheme year if–

(a) that pension was eligible to be so increased; and

(b) the beginning date for that pension were the same as the beginning date for the old service pension.

(5) In this regulation "the beginning date", in relation to a pension, means the date on which it is treated as beginning for the purposes of the Pensions (Increase) Act 1971 (see section 8(2) (meaning of "pension" and other supplementary provisions) of that Act).

Meaning of "previous pay": members with concurrent employments

2.H.6.—(1) In the case of an employed pensioner who held one or more other NHS employments at the same time as the old employments, the amount to be taken as the employed pensioner's previous pay is the sum of–

(a) the amount of the employed pensioner's previous pay, in accordance with regulation 2.H.5;

(b) in respect of any of the other NHS employments which is held in the scheme year mentioned in regulation 2.H.3(2), the annual rate of pay for those employments in that scheme year; and

(c) in respect of any of the other NHS employments which is not held in the scheme year mentioned in regulation 2.H.3(2), the pensionable pay for that employment for the period of 12 months ending with the day before the old employment ceased (or, if the employed pensioner was not a member of the scheme in that employment in that period, the amount that would have been the pensionable pay for it assuming that the employed pensioner had been such a member.

(2) The amount to be taken as the employed pensioner's previous pay in accordance with paragraph (1) must be adjusted in each scheme year for inflation in the manner set out in regulation 2.H.(4).

Application of this Chapter to part-time employment

2.H.7.—(1) This regulation provides for the application of this Chapter where the old employment or the new employment is a part-time employment.

(2) The reference in regulation 2.H.5(1)(a) to the employed pensioner's reckonable pay for the purposes of the old service pension must be taken as a reference to such amount as in the opinion of the Scottish Ministers would have been the reckonable pay for those purposes if–

(a) the old employment had been a comparable whole-time employment; and

(b) accordingly the member's reckonable pay had been determined without reference to regulation 2.A.13 (meaning of "reckonable pay": non-concurrent part-time employment) or 2.A.14 (meaning of "reckonable pay": concurrent part-time employments).

Employed pensioners with more than one pension

2.H.8.—(1) This regulation provides for the application of this Chapter where a person is entitled to more than one old service pension falling within regulation 2.H.1(1)(c) in any scheme year.

(2) In regulation 2.H.3–

(a) for paragraphs (1) to (3) substitute–

"(1) If the condition in paragraph (2) is met, the amount of the old service pensions for any scheme year are reduced.

(2) The condition is that the employed pensioner's relevant income for the scheme year exceeds the employed pensioner's previous pay for all the old employments.

(3) The amount of the reduction under paragraph (1) in the case of each on the pensions is equal to the same proportion of that excess as the amount of the pension for the scheme year before the reduction bears to the sum of the pensions for that year before the reduction".

(3) In regulation 2.H.4(1)(b) for "the old service pension" substitute "all the old service pensions".

(4) Regulation 2.H.9 applies as if references to the old service pensions were references to all those pensions.

Provisional reductions and later adjustments

2.H.9.—(1) If it appears to the Scottish Ministers that the condition in regulation 2.H.3(2) will be met in any scheme year in respect of the old service pension for that year, the Scottish Ministers may reduce the amount of that pension paid at any time in the scheme year.

(2) Where the old service pension for a scheme year is being reduced under this Chapter, the Scottish Ministers must review the amount of the reduction–

(a) at the end of the scheme year; and

(b) at any time during the scheme year if it appears to the Scottish Ministers that–

(i) the amount of the reduction made for the year is or may become incorrect; or

(ii) no reduction should be made.

(3) If at any time during the scheme year it so appears, the Scottish Ministers must make such adjustments, whether by altering the amount of the reduction or by repaying to the employed pensioner any amount that should not have been deducted from the pension, as appear to the Scottish Ministers to be required.

(4) If at the end of the scheme year it is apparent that–

(a) the reduction in the old service pension for the year was excessive; or

(b) no such reduction should have been made,

the Scottish Ministers must repay the amount due to the employed pensioner.

(5) If at the end of the scheme year it is apparent that the old service pension paid for the year exceeded the amount due because the reduction in the old service pension required under regulation 2.H.3 was not made, the employed pensioner must repay the excess to the Scottish Ministers.

(6) Paragraph (5) does not affect the Scottish Ministers right to recover a payment or overpayment in any case where the Scottish Ministers consider it appropriate to do so.