
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 224

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

PART 3

BENEFITS FOR PRACTITIONERS, ETC.

CHAPTER 3.G

RE-EMPLOYMENT AND REJOINING THE SCHEME

Preliminary

Application of Chapter 3.G

- 3.G.1.**—(1) Subject to paragraphs (4) to (7), this Chapter applies to persons who—
- (a) have been active members of the scheme in respect of their service in an employment;
 - (b) have ceased to be employed in that employment and have become deferred members or pensioner members of the scheme because of their rights in respect of that service;
 - (c) become employed again in an employment that qualifies them to belong to the scheme; and
 - (d) become active members of the scheme in respect of their service in that employment.
- (2) In these regulations a member to whom this Chapter applies is referred to as a “re employed member”.
- (3) In this Chapter, in relation to any re-employed member—
- (a) the service referred to in paragraph (1)(a) is referred to as “the earlier service”; and
 - (b) the service referred to in paragraph (1)(d) is referred to as “the later service”.
- (4) This Chapter also applies to members who—
- (a) cease to be active members in respect of their service in an employment as the result of exercising the option under regulation 3.B.5 (opting out of the scheme); and
 - (b) later become active members in that or another employment,
- as it applies to members who cease to be employed in the employment in which they are active members, and paragraph (3) must be read accordingly.
- (5) This Chapter does not apply if the earlier service and the later service are treated as a single continuous period of pensionable service under regulation 3.A.4(5) (pensionable service: breaks in service).
- (6) Regulation 3.G.4 applies whether or not the employment mentioned in paragraph (1)(c) is employment that qualifies the member to belong to the scheme.
- (7) If a re-employed member ceases to be an active member again, this Chapter applies again in respect of the later service as if it were the earlier service (and so on).

General rule: separate treatment of service etc. except where unfavourable to member

General rule: separate treatment of service etc.

3.G.2.—(1) The general rule is that, in accordance with regulations 3.D.17 (dual capacity membership) and 3.E.25 (dual capacity membership: death benefits)—

- (a) the re-employed member’s pensionable service in respect of the earlier service and the later service are treated separately; and
 - (b) the re-employed member’s pensionable earnings in respect of the earlier service and the later service are determined separately.
- (2) This regulation is subject to the provisions mentioned in regulations 3.D.17(4) and 3.E.25(5).

Exception to general rule in 3.G.2

3.G.3.—(1) The general rule in regulation 3.G.2 does not apply 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 that general rule were disregarded.

(2) Accordingly, in a case within paragraph (1)—

- (a) the member’s pensionable service in respect of the earlier service and the later service are treated as one single continuous period;
- (b) the member’s qualifying service in respect of the earlier service and the later service are each treated as one single continuous period;
- (c) the member is not treated as a deferred member in respect of the earlier service; and
- (d) the member’s pensionable earnings in respect of the later period may be determined by reference to the earlier period as well as the later period (as a result of regulation 3.A.4(5)).

Special rules about re-employment of ill health pensioners

Effect of re-employment on upper tier ill health pensions

3.G.4.—(1) This regulation applies if a member who is entitled to an upper tier ill health pension under regulation 3.D.7 (early retirement on ill health (active members)) in respect earlier service—

- (a) did not opt to exchange that pension for a lump sum in accordance with regulation 3.D.11 (option for members in serious ill health to exchange whole pension for lump sum); and
- (b) has re-entered employment (“the further employment”).

(2) Subject to paragraphs (3) and (4), the member ceases to be entitled to the upper tier ill health pension under regulation 3.D.7 and becomes entitled to a lower tier ill health pension under that regulation.

(3) In a case where the further employment is—

- (a) not NHS employment; and
- (b) an excluded employment,

paragraph (2) does not apply.

(4) In a case where the further employment is—

- (a) NHS employment; and
- (b) an excluded employment

paragraph (2) does not apply during the initial period.

(5) As regards a further employment in NHS employment–

- (a) paragraph (2) applies from the first lower tier ill health pension payment date which falls after the first anniversary of the member’s re-entry into NHS employment, whether or not that day is part of a continuous period of further NHS employment beginning with entry into that employment; and
- (b) the member may not rejoin the scheme in respect of that employment or any other NHS employment until after the first anniversary of the member’s re-entry into NHS employment, whether or not that or any other NHS employment is an excluded employment.

(6) For the purposes of this regulation–

- (a) an employment is an excluded employment at any time in a scheme year, in relation to a member, if the member’s earnings from the employment and any other employments are such that the lower earnings limit for that year is not exceeded;
- (b) for the purposes of paragraph (2) an employment that has been an excluded employment in a scheme year is not treated as ceasing to be such an employment until the first day following the end of the pension pay period for the upper tier ill health pension in which the limit described in sub paragraph (a) is first exceeded; and
- (c) “the initial period” means the period of 12 months beginning with the day on which the member first enters an employment which results in this regulation applying.

(7) A member who, before attaining the age of 65, has ceased to be entitled to an upper tier ill health pension under paragraph (2), and who–

- (a) is in further NHS employment and ceases to be employed at all during the initial period; or
- (b) is in further employment that is not NHS employment and ceases to be employed in that further employment within a period of one year beginning with the day on which that further employment ceased to be an excluded employment,

may apply to the Scottish Ministers under this paragraph to become entitled to an upper tier ill health pension.

(8) An application under paragraph (7)–

- (a) where paragraph (7)(a) applies, must–
 - (i) state that the member has ceased to be employed at all;
 - (ii) be made within the initial period; and
 - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 3.D.7(3)(a) (early retirement on ill health (active members)); and
- (b) where paragraph (7)(b) applies, must–
 - (i) state that the member has ceased to be employed at all;
 - (ii) be made within a period of one year beginning with the day on which that employment ceased to be an excluded employment; and
 - (iii) be made in writing and be accompanied by evidence from a registered medical practitioner that the member meets the condition in regulation 3.D.8(3)(a) (re assessment to entitlement to an ill health pension determined under regulation 3.D.7).

- (9) If on an application under paragraph (7) the Scottish Ministers are satisfied that the member meets the condition in 3.D.7(3)(a), from the day following that on which the member's last employment ceased—
- (a) the member ceases to be entitled to the lower tier ill health pension under regulation 3.D.7; and
 - (b) becomes entitled to an upper tier ill health pension under that regulation in respect of the earlier service.
- (10) A member who falls within paragraph (1) must—
- (a) notify the Scottish Ministers if the member is in NHS employment at the end of the initial period;
 - (b) notify the Scottish Ministers if the member's aggregate earnings for the purpose of national insurance from employments held in a tax year are such that the lower earnings limit is exceeded; and
 - (c) provide the Scottish Ministers or any other person specified by the Scottish Ministers with such further information as the Scottish Ministers specify concerning any further employment.
- (11) This regulation is subject to regulation 3.G.5 (re-employed lower tier ill health pensioners).

Re-employed lower tier ill health pensioners

3.G.5.—(1) This regulation applies to re-employed members who are entitled to a lower tier ill health pension under regulation 3.D.7 (early retirement on ill health: active members) in respect of the earlier service.

(2) For the purposes of determining whether a member can count 45 years of pensionable service for any purpose, the earlier service and the later service are aggregated.

(3) If the re-employed member became entitled to a lower tier ill health pension for the earlier service, and on the termination of the later service the member becomes entitled to—

- (a) a lower tier ill health pension; or
- (b) an upper tier ill health pension,

under regulation 3.D.7 in respect of the later service, the re-employed member is entitled to the benefits set out in paragraph (4).

(4) The benefits mentioned in paragraph (3) are—

- (a) the member's original lower tier ill health pension in respect of his or her earlier service; and
- (b) a lower tier or, as the case may be, upper tier ill health pension in respect of the later service.