
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

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.