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SCOTTISH STATUTORY INSTRUMENTS

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**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*

**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).