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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 174**

**The National Health Service Superannuation  
Scheme (2008 Section) (Scotland) Regulations 2013**

**PART 3**

**BENEFITS FOR PRACTITIONERS, ETC.**

**CHAPTER 3.K**

**2008 SECTION OPTANTS**

*Application and options*

**Application of Chapter 3.K**

**3.K.1.**—(1) This Chapter makes provision in relation to persons who are active members of the 1995 Section on or after 1st October 2009 and who opt to become members of this Section of the scheme on the basis set out in this Chapter, including persons who—

- (a) return to NHS practitioner service in respect of which there is a liability to pay contributions to the scheme in accordance with regulation D1 (contributions by members) of the 2011 Regulations (as modified by paragraph 14 of Schedule 1 to those Regulations) within a period of less than 5 years beginning with the day on which they last left such service (whether or not that period includes 1st October 2009);
- (b) become members of the 1995 Section (whether for the first time or for a second or subsequent time having previously been a member of that Section) in accordance with regulation B2(3) (age limits and restrictions on membership) of the 2011 Regulations;
- (c) are pensioner members of the 1995 Section in respect of a pension payable under regulation E6 (early retirement pension (redundancy etc.)) or E7 (early retirement pension (redundancy etc. new starters and post-transition)) of the 2011 Regulations.

(2) This Chapter does not apply to a person if—

- (a) that person is an active member of the 1995 Section by virtue of regulation E2(12) (early retirement pension on ill health grounds (pre 1st April 2008)) of the 2011 Regulations; or
- (b) that person is a former member of a corresponding 1995 scheme and the administrators of that scheme have confirmed that the person did not elect to join the relevant corresponding 2008 scheme when offered the opportunity to do so.

(3) In this Part, a member of this Section of the scheme to whom this Chapter applies is referred to as a “2008 Section Optant”.

**Options for a member of the 1995 Section to join this Section of the scheme**

**3.K.2.**—(1) A person who by virtue of that person's practitioner service—

- (a) was an active member of the 1995 Section—

- (i) on, or after, 1st October 2009; and
  - (ii) on the day that person's option to join this Section of the scheme was received by the Scottish Ministers; and
- (b) would be eligible to join this Section of the scheme if that person met the condition in regulation 3.B.1(3)(a) (eligibility: general),
- may join this Section of the scheme under the terms of this Chapter.

(2) A person who satisfies the conditions in paragraph (1) may only join this Section of the scheme if that person opts to do so.

(3) Subject to paragraphs (4) and (8) and regulation 3.K.18 (circumstances in which a member of the 1995 Section may defer making an option to join this Section of the scheme), the option may only be exercised by giving notice in writing to the scheme administrator—

- (a) in such form as the Scottish Ministers require; and
  - (b) before the date the Scottish Ministers specify for that purpose in the comparative statement of benefits under the 1995 Section and this Section of the scheme issued to that person (“the comparative statement”).
- (4) For the purpose of paragraph (3)—
- (a) the date specified by the Scottish Ministers in the comparative statement must be a date that is at least four months later than the comparative statement issue date; and
  - (b) the notice must be—
    - (i) irrevocable; and
    - (ii) treated as having been given on the date on which it is received by the scheme administrator.

- (5) Subject to paragraph (13)—
- (a) the option must be effective from the first day of the member's pensionable service in the 1995 Section falling on or after 1st April 2008;
  - (b) the person must be treated as if that person had been a member of this Section of the scheme from that date; and
  - (c) the member's service and pensionable earnings both for the purpose of ascertaining entitlement to, and calculation of, benefits under the 1995 Section must count under this Section of the scheme only to the extent that it would have counted had the member been an active member of this Section of the scheme from that date.

(6) If contributions due from the member under Chapter 3.C (contributions) in respect of any periods beginning on or after 1st April 2008 are not made when they are due because of the time when the option is exercised, the amount overdue is to be paid by deduction from the member's pensionable earnings in such manner and at such rate as the Scottish Ministers require.

(7) If, in a case where paragraph (6) applies, the member ceases to be an active member of this Section of the scheme before the amount overdue has been paid under that paragraph, the amount outstanding becomes payable immediately.

(8) The Scottish Ministers may extend the time limit in paragraph (3) if the Scottish Ministers consider that the person has not had a reasonable opportunity to consider whether to exercise the option.

(9) The Scottish Ministers may accept an option to join this Section of the scheme that is received after the person ceases to be an active member of the 1995 Section if either paragraph (10) applies to that person or that person satisfies all of the following—

- (a) a comparative statement of benefits under the 1995 Section and this Section of the scheme was issued to the person whilst that person was an active member of the 1995 Section;
  - (b) but for the exercise of the option, the person would otherwise become entitled to the immediate payment of benefits under Part E (benefits for members) of the 2011 Regulations (as modified by paragraphs 15 and 16 of Schedule 1 to those Regulations);
  - (c) the person has provided the Scottish Ministers with a notice in writing in such form as the Scottish Ministers may require that benefits are not to be paid from the 1995 Section and has not revoked that notice; and
  - (d) the person exercises the option before the end of the four month period beginning with the comparative statement issue date.
- (10) This paragraph applies to a person who—
- (a) has ceased to pay contributions in accordance with regulation D1(26) (special class officers) or (27) (non special class officers) of the 2011 Regulations;
  - (b) is continuing in NHS employment; and
  - (c) exercises the option before the end of the four month period beginning with the comparative statement issue date.
- (11) A person may revoke a notice given for the purposes of paragraph (9)(c)—
- (a) at any time;
  - (b) in writing in such form as may be required by the Scottish Ministers for that purpose.
- (12) A person who has revoked a notice in accordance with paragraph (11) may not provide a further notice under paragraph (9).
- (13) A person exercising an option under this regulation who is entitled to a pension under regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations may count as qualifying service for the purpose of this Section of the scheme a period of service, measured in years and days, equal to the qualifying service that person was entitled to count under regulation C3 (meaning of “qualifying service”) of the 2011 Regulations in determining the person's entitlement to that pension.
- (14) For the purposes of paragraphs (4), (9) and (10) the comparative statement issue date is the date on which the comparative statement of benefits under the 1995 Section and this Section of the scheme is sent (whether by electronic communication or otherwise)—
- (a) to the person; or
  - (b) to the person's employing authority.
- (15) Subject to paragraph (1)(a)(ii) and any extension of time in accordance with paragraph (8), where paragraph (14)(b) applies the person must have a period equal to at least four months ending on the date specified by the Scottish Ministers in accordance with paragraph (4)(a) in which to opt to join this Section of the scheme.

*Transfer of service and pensionable earnings from the 1995 Section*

**Service and pensionable earnings credited from the 1995 Section**

**3.K.3.—**(1) A 2008 Section Optant who—

- (a) becomes a member of this Section of the scheme; and
- (b) is not entitled to a pension under regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations,

is entitled to count the following service under this Section of the scheme.

(2) The member may count as qualifying service a period equal in length to the period of qualifying service up to, and including, 31st March 2008 which the member was entitled to count under the 1995 Section (but not exceeding 45 years).

(3) Subject to paragraph (9) and regulation 3.K.10, the pensionable earnings and service which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section of the scheme is an amount equal to the amount of pensionable earnings for practitioner service up to, and including, 31st March 2008 which the Optant was entitled to count under regulation C2 (meaning of “pensionable service”) of the 2011 Regulations.

(4) Subject to paragraphs (5), (8), (9) and (10) and regulation 3.K.10 the pensionable earnings and service which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section of the scheme is an amount equal to the amount of pensionable earnings for practitioner service up to and including 31st March 2008 which the Optant was entitled to count under regulation C2 (meaning of “pensionable service”) of the 2011 Regulations multiplied by the factor specified in paragraph (8) applicable to the case.

(5) Subject to paragraph (6) in determining the amounts of pensionable earnings up to, and including, 31st March 2008 in paragraph (3) or (4), the Scottish Ministers must have regard to—

- (a) the pensionable earnings for any scheme year recorded by the Optant's contracting Health Board or someone appointed to act on its behalf;
- (b) the pensionable earnings for any scheme year certified by the Optant in accordance with paragraph 31 of Schedule 1 to the 2011 Regulations.

(6) Subject to paragraph (7) if, in respect of any particular scheme year, the pensionable earnings referred to in paragraph (5)(a) or (b) are not available, the Scottish Ministers must determine the pensionable earnings for that scheme year and in doing so must have regard to—

- (a) the contributions paid in accordance with regulation D1 (contributions by members) of the 2011 Regulations or regulation 3.C.1 (contributions by members); or
- (b) the figure supplied by the contracting Health Board or someone appointed to act on its behalf.

(7) If—

- (a) the Scottish Ministers have made a determination of pensionable earnings in accordance with paragraph (6); and
- (b) the pensionable earnings referred to in paragraph (5) that were not available to the Scottish Ministers at the time of that determination, subsequently become available,

the Scottish Ministers must revise that determination accordingly.

(8) The factor referred to in paragraph (4) is the factor specified by the Scottish Ministers for that purpose.

(9) For the purposes of paragraphs (3) and (4), the pensionable earnings for practitioner service which the 2008 Section Optant is entitled to count under regulation C2 (meaning of “pensionable service”) of the 2011 Regulations does not include any pensionable service the Optant was entitled to count under regulation C2(1)(d) of those Regulations.

(10) Where a 2008 Section Optant becomes a member of this Section of the scheme under this Part, all rights in respect of that Optant under the 1995 Section are extinguished.

### **Treatment of additional pension**

**3.K.4.—**(1) This regulation applies to a 2008 Section Optant who, whilst a member of the 1995 Section, had exercised an option to purchase additional pension (“an OPAP”) under regulations Q8 (option to pay periodical contributions) or Q10 (option to pay lump sum) or whose employing authority had done so under regulation Q11 (additional lump sum) of the 2011 Regulations.

(2) Where paragraph (1) applies, the amount of additional pension that will count under this Section of the scheme must be calculated in accordance with—

- (a) paragraph (3) when all the contributions required to be made under the OPAP have been made in accordance with regulation Q14 (effect of payment of additional contributions) of the 2011 Regulations; and
- (b) paragraph (4) when the OPAP has ceased or been cancelled in accordance with regulation Q13 (cancellation and cessation of options) of the 2011 Regulations.

(3) Where paragraph (2)(a) applies, the amount of additional pension that will count under regulation 3.C.12 (effect of payment of additional contributions) must be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q14 of the 2011 Regulations where the person's chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9), that would have been purchased in the 1995 Section under regulation Q14 of the 2011 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Scottish Ministers must have regard to the advice of the scheme actuary, where the person's chosen birthday under the OPAP was 60.

(4) Where paragraph (2)(b) applies, the amount of additional pension that will count under regulation 3.C.14 (effect of part payment of periodical contributions) must be equal to the amount of additional pension—

- (a) purchased in the 1995 Section under regulation Q13 of the 2011 Regulations, where the person's chosen birthday under the OPAP was 65;
- (b) subject to paragraph (9), that would have been purchased in the 1995 Section under regulation Q13 of the 2011 Regulations if the person's chosen birthday had been 65 and, in determining that amount, the Scottish Ministers must have regard to the advice of the scheme actuary, where the person's chosen birthday under the OPAP was 60.

(5) The additional pension referred to in paragraph (3) or (4) that counts in this Section of the scheme must do so from the effective date specified in regulation 3.K.2(5) (options for a member of the 1995 Section to join this Section of the scheme).

(6) This paragraph applies—

- (a) to a person referred to in paragraph (1); and
- (b) where at the effective date specified in regulation 3.K.2(5)—

(i) that person—

- (aa) was making additional contributions in accordance with an OPAP exercised under regulation Q8 of the 2011 Regulations;
- (bb) had applied to make, but had not yet begun making, additional contributions under regulation Q8 of the 2011 Regulations; or
- (cc) had applied to make, but had not yet made, a single lump sum contribution in accordance with an OPAP exercised under regulation Q10 of the 2011 Regulations; or

(ii) that person's employing authority had applied to make, but had not yet made, a single lump sum contribution on the person's behalf, in accordance with an OPAP exercised under regulation Q11 of the 2011 Regulations.

(7) Where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 (option to pay additional periodical contributions to purchase additional pension) of the 2011 Regulations was 65, the OPAP referred to in that paragraph applies in this Section of the scheme as if the OPAP were an option to purchase additional pension in accordance with whichever of

regulation 3.C.6 (periodical contributions), 3.C.8 (lump sum contribution) or 3.C.9 (lump sum contributions by employing authority) would apply in that case.

(8) Subject to paragraph (9) where paragraph (6) applies and the person's chosen birthday referred to in regulation Q8 (option to pay additional periodical contributions to purchase additional pension) of the 2011 Regulations was 60, the OPAP referred to in that paragraph applies in this Section of the scheme—

- (a) as if the OPAP were an option to purchase additional pension in accordance with whichever of regulation 3.C.6, 3.C.8 or 3.C.9 would apply in that case; and
  - (b) after adjustment, having regard to the advice of the scheme actuary, so that—
    - (i) the amount of the additional pension purchased in this Section of the scheme is the same as that which would have been purchased in the 1995 Section; and
    - (ii) the additional periodical or lump sum contributions payable, regard being had to the normal retirement age of 65 applying in this Section of the scheme, reduce or (where appropriate) cease to be payable.
- (9) If paragraph (3)(b), (4)(b) or (8) applies and—
- (a) the amount of the additional pension calculated in accordance with paragraph (3)(b) or (4)(b) will exceed the limit on the total increase in the member's pension referred to, as the case may be, in regulation 3.C.6, 3.C.8 or 3.C.9; or
  - (b) the limit on the total increase in the member's pension referred to in regulation 3.C.6 will be exceeded by the amount of additional pension that counts in this Section of the scheme in accordance with paragraph (8)(b)(i) notwithstanding any reduction in, or cessation of, additional contributions payable in accordance with paragraph (8)(b)(ii),

the total increase in the member's pension under this regulation, taken together with any other increase under regulations 3.C.6, 3.C.8 or 3.C.9 is subject to the limit on the total increase in the member's pension described in regulation 3.C.6, 3.C.8 or 3.C.9.

(10) The amount of additional pension that counts in this Section of the scheme in accordance with paragraphs (2) to (8) that exceeds the limit in paragraph (9) is to be converted to pensionable earnings under regulation 3.A.7(10) (meaning of “pensionable earnings”), and in determining the amount of such additional pension to be converted into pensionable earnings, the Scottish Ministers must have regard to the advice of the scheme actuary.

### **Treatment of additional service and pensionable earnings**

**3.K.5.—**(1) A 2008 Section Optant—

- (a) who becomes a member of this Section of the scheme; and
- (b) is buying or has already bought a period of additional service that counts as pensionable service under regulation C2(1)(d) (meaning of “pensionable service”) of the 2011 Regulations,

is able to count an additional amount of pensionable earnings for that pensionable service in this Section of the scheme as described in whichever of paragraphs (5) or (6) apply to that Optant.

(2) Subject to paragraphs (3) and (4), the additional pensionable earnings referred to in paragraph (1) are—

- (a) any additional pensionable earnings bought under regulation Q1 (right to buy additional service) of the 2011 Regulations (as modified by paragraph 26 of Schedule 1 to those Regulations) before the date that person's option to join this Section of the scheme was received by the Scottish Ministers in accordance with regulation 3.K.2 (option for a member of the 1995 Section to join this Section of the scheme); and

- (b) any additional pensionable earnings bought under regulation 27 (purchase of added years of contributing service) of the National Health Service (Superannuation) (Scotland) Regulations 1980 <sup>M1</sup>.
- (3) The additional pensionable earnings referred to in paragraph (2)(a) is to be calculated in accordance with—
- (a) regulation Q1(6) (right to buy additional service) of the 2011 Regulations (as modified by paragraph 26(2) or, as the case may be, 26(4) of Schedule 1 to those Regulations) in the case of an election that had ceased and was paid for in full by the date referred to paragraph (2)(a);
  - (b) regulation Q7(1), (5) and (6) (but not (7)) (part payment for additional service or unreduced retirement lump sum) of the 2011 Regulations, in the case of an election that had ceased but had only partially been paid for at that date; or
  - (c) subject to paragraph (7), regulation Q7(1), (5) and (6) (but not (7)) of the 2011 Regulations, in the case of an election that remained in force immediately before that date.
- (4) The additional pensionable earnings referred to at paragraph (2)(b) are to be calculated in accordance with whichever of regulation 27(3) or (4)(b) of the National Health Service (Superannuation) (Scotland) Regulations 1980 <sup>M2</sup> applies to the Optant.
- (5) The additional pensionable earnings which a 2008 Section Optant who is under age 60 on 1st October 2009 may count under this Section of the scheme is an amount equal to the amount of additional pensionable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies.
- (6) The additional pensionable earnings which a 2008 Section Optant who is age 60 or over on 1st October 2009 may count under this Section of the scheme is the pensionable earnings found by—
- (a) first taking the additional pensionable earnings calculated in respect of that Optant in accordance with whichever of paragraph (3) or (4) applies (“APE”); and
  - (b) then multiplying APE by the factor specified by the Scottish Ministers for that purpose.
- (7) Where a member was buying additional service by means of regular additional contributions immediately before the date referred to in paragraph (2)(a)—
- (a) the member's election to buy additional service ceases from that date; and
  - (b) any additional contributions due under the election that are unpaid at that date must be deducted from the member's pensionable pay in accordance with regulation 3.K.2(6) and (7) (options for a member of the 1995 Section to join this Section of the scheme).
- (8) Subject to regulation 3.K.16, for the purposes of calculating the Optant's benefits under this Section of the scheme the additional pensionable earnings that the Optant is entitled to count under paragraph (5) or, as the case may be, paragraph (6) is to be added to the amount of pensionable earnings the member is entitled to count under—
- (a) regulation 3.K.3(3), if the member is under age 60 on 1st October 2009; or
  - (b) regulation 3.K.3(4), if the member is age 60 or over on that date.

#### Marginal Citations

- M1** [S.I. 1980/1177](#). Regulations 27 and 28 were revoked by [S.I. 1995/365](#).  
**M2** [S.I. 1980/1177](#). Regulations 27 and 28 were revoked by [S.I. 1995/365](#).

### **Treatment of unreduced retirement lump sum**

**3.K.6.**—(1) This regulation applies to a 2008 Section Optant who becomes a member of this Section of the scheme and, at the date that person's option to join this Section of the scheme was received by the Scottish Ministers in accordance with regulation 3.K.2 (option for a member of the 1995 Section to join this Section of the scheme), elects under regulation Q2 (right to buy an unreduced retirement lump sum) of the 2011 Regulations to—

- (a) purchase an unreduced retirement lump sum for service before 25th March 1972; or
- (b) buy additional survivor's pension for service before 6th April 1988,

which satisfies any of the conditions in paragraph (2).

(2) Those conditions are that the election—

- (a) was paid for in full by the date referred to in paragraph (1);
- (b) ceased before the date referred to in paragraph (1), but before completion of the additional contributions payable;
- (c) was payable by additional contributions and remained in force immediately before the date referred to in paragraph (1); or
- (d) was payable by deduction from the member's retirement lump sum.

(3) If paragraph (1) applies, the election referred to in that paragraph ceases to be effective from 1st April 2008 and—

- (a) any additional contributions under the election that were due but not paid at that date must be deducted in accordance with regulations 3.K.2(6) and (7);
- (b) any liability to pay additional contributions under the election ceases from 1st April 2008; and
- (c) any requirement to pay for an unreduced retirement lump sum by the deduction referred to in paragraph (2)(d) lapses.

### **Treatment of 2008 Section Optants to whom regulation L1(3) of the 2011 Regulations applied immediately before 1st April 2008**

**3.K.7.**—(1) This regulation applies to a 2008 Section Optant—

- (a) whose benefits on retirement or death would, but for this regulation, be calculated in accordance with Chapters 3.D (members' retirement benefits) and 3.E (death benefits); and
- (b) who, but for joining this Section of the scheme, would otherwise have been entitled to have benefits on retirement or death calculated in accordance with regulation L1(3) (treatment of pensionable service of early leavers returning to pensionable employment) of the 2011 Regulations.

(2) Subject to paragraph (3), for the purpose of calculating the benefits on retirement or death of a 2008 Section Optant referred to in paragraph (1), the Optant may, where it would be more beneficial to the Optant, be treated—

- (a) as a deferred member of this Section of the scheme in respect of any period of practitioner service and pensionable earnings credited to that Optant under regulation 3.K.3 that relates to one or more periods of practitioner service in the 1995 Section that occurred before a break of 12 months or more in such service (“an earlier service credit”); and
- (b) as if the Optant became an active member for the first time on the first day of any period of practitioner service and pensionable earnings credited to that Optant under regulation 3.K.3 that relates to a period of pensionable service in the 1995 Section that occurred after a break of 12 months or more in such service.



(3) Subject to regulation 3.D.7(5)(b)(ii) (early retirement on ill health: active members and non-contributing members), the Optant's benefits in respect of an earlier service credit mentioned in paragraph (2)(a) must be calculated—

- (a) separately; and
- (b) by reference to the member's uprated earnings calculated in accordance with paragraph 11 (officer service treated as practitioner service) of Schedule 1 to the 2011 Regulations in respect of that particular period.

### **Pension debit members**

**3.K.8.**—(1) This regulation applies where, on becoming a member of this Section of the scheme, a 2008 Section Optant is a pension debit member.

(2) The amount of the reduction to be made to the Optant's benefits under this Section of the scheme is the amount of the reduction that applied to the Optant's benefits under the 1995 Section calculated in accordance with section 31 (reduction of benefit: sharing of rights under pension arrangements) of the 1999 Act adjusted by the factor referred to in paragraph (3).

(3) The factor referred to in paragraph (2) is the factor specified by the Scottish Ministers for that purpose.

(4) The Scottish Ministers may, after taking advice from the scheme actuary, make such modifications to—

- (a) the Optant's rights; and
- (b) the form of the Optant's benefits,

as the Scottish Ministers consider necessary for the purpose specified in paragraph (5).

(5) If in the opinion of the Scottish Ministers, it is necessary for the purpose of giving effect to the pension sharing order to which the Optant's rights are subject for some or all of the benefits under this Section of the scheme to be taken in a different form from that in which that Optant would otherwise be entitled to take them, the Scottish Ministers may modify those benefits as described in paragraph (4).

### **Pensionable earnings credited under regulations 3.K.3 and 3.K.5 to be treated as capped Optant pensionable earnings**

**3.K.9.**—(1) This regulation applies for the purpose of determining the amount of an Optant's pensionable earnings (if any) that fall to be treated as capped Optant pensionable earnings for the purposes of calculating benefits payable to, or in respect of, the Optant under this Part.

(2) In paragraph (1), “capped Optant pensionable earnings” means the amount of pensionable earnings that the Optant is entitled to count under regulations 3.K.3 and 3.K.5 in respect of an amount of capped pensionable earnings for service in the 1995 Section up to, and including, 31st March 2008.

(3) For the purposes of paragraph (2) the Optant's pensionable earnings were capped pensionable earnings in respect of service in the 1995 Section so far as—

- (a) in the case of pensionable earnings in respect of service before 6th April 2006—
  - (i) the Optant was an active member of the 1995 Section; and
  - (ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to pensionable earnings limited in each tax year to the permitted maximum for that year within the meaning of section 590C(2) (earnings cap) of the Income and Corporation Taxes Act 1988<sup>M3</sup>; or
- (b) in the case of pensionable earnings in respect of service on or after 6th April 2006—
  - (i) the Optant was an active member of the 1995 Section; and

(ii) that Optant's pension under that Section in respect of the service was to be calculated by reference to pensionable earnings limited in each tax year to an amount calculated in the same manner as the permitted maximum under Section 590C(2) of the Income and Corporation Taxes Act 1988 was calculated for tax years ending before that date.

(4) For the purposes of paragraph (3) it does not matter whether, apart from the application of the limit referred to in that paragraph, the Optant's earnings in any tax year would have exceeded the amount of the limit.

(5) In this regulation “pensionable earnings” has the meaning given in regulation 3.A.7.

**Marginal Citations**

**M3** 1988 c.1. Section 590C was repealed by Part 3 of Schedule 42 to the [Finance Act 2004 \(c.12\)](#).

**Amount of pension and lump sum to be paid to a 2008 Section Optant**

**3.K.10.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) is entitled to an annual pension under Chapter 3.D (members' retirement benefits); or
- (b) is entitled to the payment of a transfer value under Chapter 3.F in respect of the pension that has accrued to or in respect of that Optant under this Section of the scheme.

(2) In the case of a 2008 Section Optant referred to in paragraph (1)(a), that Optant is entitled to—

- (a) the payment of a lump sum determined in accordance with whichever of the following paragraphs of this regulation that apply to that Optant; and
- (b) the annual amount of pension referred to in paragraph (1)(a) to which that Optant is entitled, reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.

(3) In the case of a 2008 Section Optant referred to in paragraph (1)(b)—

- (a) the transfer value must be calculated by reference to a lump sum determined under paragraph (5); and
- (b) the pension by reference to which, apart from this regulation, the transfer value in respect of that Optant would otherwise be calculated must be reduced by an amount equal to the amount of the lump sum referred to in sub-paragraph (a) divided by 12.

(4) Subject to paragraphs (13) and (15), except in a case to which paragraph (6), (8), (10) or (12) applies, the amount of the lump sum must be determined as described in paragraph (5).

(5) The amount of the lump sum must be determined by—

- (a) applying the formula—

$$3 \times \left( 1.4\% \text{ of the member's Relevant Up-rated Earnings} \right)$$

; and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(6) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 3.D.4 (early payment of pension with actuarial reduction); and
  - (b) has not attained age 60 on the day of becoming entitled to that pension,
- the amount of the lump sum must be determined as described in paragraph (7).

(7) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (6) must be calculated by—

- (a) applying the formula—

$$3 \times \left( 1.4\% \text{ of the member's Relevant Up-rated Earnings} \times \text{Reduction Factor} \right)$$

; and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(8) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 3.D.5 (partial retirement: members aged at least 55) for the first time; and
- (b) has not attained age 60 on the day of becoming entitled to that pension,

the amount of the lump sum must be determined as described in paragraph (9).

(9) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (8) must be calculated by—

- (a) applying the formula—

$$3 \times \left( 1.4\% \text{ of the member's Specified Up-rated Earnings} \times \text{Reduction Factor} \right)$$

; and

- (b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(10) In the case of an Optant who—

- (a) becomes entitled to an annual amount of pension payable under regulation 3.D.5 (partial retirement: members aged at least 55) for the first time; and
- (b) has attained age 60 on the day of becoming entitled to that pension,

the amount of the lump sum must be determined as described in paragraph (11).

(11) The amount of the lump sum that is to be paid to an Optant referred to in paragraph (10) must be calculated by—

- (a) applying the formula—

$$3 \times \left( 1.4\% \text{ of the member's Specified Up-rated Earnings} \right)$$

; and

(b) rounding down the amount found under sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(12) In the case of an Optant—

(a) who is a pensioner member as respects a pension payable under regulation 3.D.5(8)(a); and

(b) who—

(i) subsequently exercises an option under that regulation for the second or final time; or

(ii) becomes entitled to any other pension under Chapter 3.D in respect of pensionable service not taken into account for the purposes of calculating the pension payable under sub-paragraph (a),

the amount of the lump sum must be determined by the Scottish Ministers after taking advice from the scheme actuary.

(13) If, on becoming a member of this Section of the scheme, a 2008 Section Optant is a pension debit member the amount of the lump sum determined under this regulation must be reduced by the amount calculated under paragraph (14) (“the pension debit reduction”).

(14) The amount of the pension debit reduction referred to in paragraph (13) must be calculated by—

(a) applying the formula—

$$3 \times \left( 1995SectionPensionDebitxIncreaseFactor \right)$$

; and

(b) rounding up the amount found in sub-paragraph (a) to the nearest amount of whole pounds that is divisible by 12.

(15) If any part of an Optant's benefit under this Section of the scheme falls to be calculated by reference to capped Optant pensionable earnings under regulation 3.K.9 the determinations in this regulation must apply separately in respect of—

(a) the pension to which the Optant is entitled in respect of the pensionable earnings that fall to be calculated by reference to capped pensionable earnings; and

(b) the pension to which the Optant is entitled in respect of the pensionable earnings that do not fall to be calculated by reference to capped pensionable earnings.

(16) If the benefits of an Optant to whom this regulation applies are subject to the modifications provided for in Part 4 (benefits in cases of mixed service)—

(a) the amount of—

(i) the lump sum referred to in paragraph (2)(a) and in regulation 2.K.12(2)(a); and

(ii) the reduction in the annual amounts of pension referred to in paragraph (2)(b) and in regulation 2.K.12(2)(b),

is to be calculated without regard to those modifications;

(b) any pension included in the “reference amount” or, as the case may be, the “base amount” referred to in regulations 4.C.1(1) and 4.A.2 (respectively) and payable to a member under Part 4, attracts, on the member's retirement, an immediate increase under the Pensions (Increase) Act 1971 <sup>M4</sup>;

- (c) the amount of any lump sum referred to in sub-paragraph (a)(i) that is based on a pension that attracts an immediate increase under the Pensions (Increase) Act 1971, is—
- (i) increased in like manner; and
  - (ii) give rise to a corresponding increase in the reduction to the corresponding annual amount of pension referred to in sub-paragraph (a)(ii); and
- (d) the total of the amounts referred to in sub-paragraph (a)(i) and (a)(ii), together with any increases described in sub-paragraph (c), apply to the “reference amount” or, as the case may be, the “base amount” referred to in regulations 4.C.1(1) and 4.A.2 (respectively) payable to a member under Part 4.
- (17) In this regulation—
- “1995 Section Pension Debit” means the amount by which the Optant's annual pension under the 2011 Regulations was to be reduced in accordance with section 31 (reduction of benefit) of the 1999 Act;
- “annual amount”, in relation to a pension, means the amount of the annual pension to which the member would be entitled under this Section of the scheme apart from this regulation, together with any increases payable under the Pensions (Increase) Act 1971 <sup>M5</sup>, calculated as at the time payment would first be due;
- “Increase Factor” means the factor that would have applied to the 1995 Section Pension Debit for the purposes of section 29 (creation of pension debits and credits) of the 1999 Act if the Optant had become entitled to a pension under the 2011 Regulations—
- (a) on the date that the Optant becomes entitled to a pension referred to in paragraph (1)(a); or
  - (b) on the day after the Optant's last day of pensionable service if the Optant becomes entitled to the payment of a transfer value referred to in paragraph (1)(b);
- “Reduction Factor” means the reduction factor that the Scottish Ministers, after taking advice from the scheme actuary, determines would have applied to that Optant's lump sum retiring allowance under regulation E14(7)(b) (deductions from lump sum) of the 2011 Regulations if that Optant had become entitled to a pension calculated under regulation E11 (early retirement pension (with actuarial reduction)) of those Regulations on the day the Optant became entitled to a pension under regulation 3.D.4 (early payment of pension with actuarial reduction) or, as the case may be, regulation 3.D.5 (partial retirement: members aged at least 55);
- “Relevant Uprated Earnings” are the uprated earnings for the period of practitioner service (expressed in days) equal to the aggregate of—
- (a) the amount of uprated earnings for pensionable service that the Optant is entitled to count under regulation 3.K.3 (service and pensionable earnings credited from the 1995 Section); and
  - (b) the amount of additional pensionable earnings for additional service (if any) that the Optant is entitled to count under regulation 3.K.5 (treatment of additional service and pensionable earnings); and
- “Specified Uprated Earnings” means the amount of the Optant's Relevant Uprated Earnings multiplied by the percentage of the member's pension in respect of which the member claims immediate payment under regulation 3.D.5(3)(a) (“the specified percentage”).

**Marginal Citations**

**M4** 1971 c.56.

**M5** 1971 c.56.

*Miscellaneous provisions*

**Transfers-in: transitional provision**

**3.K.11.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) commenced a period of pensionable service as a practitioner member in the 1995 Section on, or after, 1st April 2008; and
- (b) within one year of the commencement of that service makes an application to transfer accrued rights to benefits to the 1995 Section under regulation N1 (member's right to transfer accrued rights to benefits to this Section of the scheme) of the 2011 Regulations.

(2) If—

- (a) the Scottish Ministers accept the transfer payment in respect of the application referred to in paragraph (1) in accordance with regulation N1(5) of the 2011 Regulations; and
- (b) that payment is received by the Scottish Ministers before the day on which the person's option to join this Section of the scheme is received,

the increase to pensionable earnings that the Optant is entitled to count in respect of that transfer payment for the purposes of calculating benefits payable to or in respect of the Optant under this Section of the scheme is to be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count is to be calculated as described in paragraph (5).

(3) If the transfer payment in respect of an application referred to in paragraph (1) is received by the Scottish Ministers on, or after, the day on which the person's option to join this Section of the scheme is received—

- (a) the Scottish Ministers may accept that payment under this Section of the scheme—
  - (i) without requiring the Optant to make an application under regulation 3.F.8 (right to apply for acceptance of transfer value payment from another scheme); and
  - (ii) subject to such other conditions as the Scottish Ministers may require; and
- (b) if the Scottish Ministers accept the payment, the increase to pensionable earnings that the Optant is entitled to count in respect of that payment for the purposes of calculating benefits payable to or in respect of that Optant under this Section of the scheme is to be calculated as described in paragraph (4) and the period of pensionable service that Optant is entitled to count is to be calculated as described in paragraph (5).

(4) Subject to paragraph (6), the increase to pensionable earnings that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, the Optant under this Section of the scheme—

- (a) is to be calculated in accordance with regulation 3.F.11 (calculation of increase to pensionable earnings as the result of a transfer-in);
- (b) the financial year in which the member joined this Section of the scheme for the purposes of regulation 3.F.11(2)(a) is the financial year in which the Optant's pensionable service referred to in paragraph (1) commenced;
- (c) the starting day for the purpose of regulations 3.F.11(2)(b) and 3.F.11(4) is the day that the member's pensionable service referred to in paragraph (1) commenced.

(5) The period of pensionable service that the Optant is entitled to count for the purpose of determining whether or not the member has reached 45 years of pensionable service for the purposes of regulation 3.A.3 (meaning of “pensionable service”) is the relevant period calculated in accordance with regulation 3.F.10 (acceptance of transfer value payments).

(6) If the transfer value payment is accepted by the Scottish Ministers under the public sector transfer arrangements—

- (a) regulation 3.F.12 (meaning of capped increase to pensionable earnings) applies to the Optant in respect of the increase to pensionable earnings that the Optant is entitled to count under this regulation; and
- (b) the reference in regulation 3.F.12(2) to the increase to pensionable earnings that the member is entitled to count under regulation 3.F.10(2)(a) must be read as a reference to the increase to pensionable earnings the Optant is entitled to count under paragraph (4).

### **2008 Section Optants: transitional upper tier ill health pension**

**3.K.12.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) has submitted a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E3 of the 2011 Regulations; and
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant's option to join this Section of the scheme.

(2) Subject to paragraph (5) if the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 3.D.7(3) (early retirement on ill health: active members and non-contributing members) (“an upper tier ill health pension”) within a period of one year beginning with the day on which that Optant's option to join this Section of the scheme is received—

- (a) that Optant's pensionable service must be increased by the enhancement period determined in accordance with paragraph (3) (“the transitional enhancement period”); and
- (b) the transitional enhancement period must apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 3.D.7(6).

(3) Subject to paragraph (4), in this regulation—

“the transitional enhancement period” means two-thirds of the Optant's assumed pensionable service; and

“the Optant's assumed pensionable service” means the further pensionable service that the Optant could have counted if the Optant had continued in service until reaching age 60.

(4) If the transitional enhancement period determined under paragraph (3) is less than four years pensionable service, the transitional enhancement period by which the Optant's pensionable service is increased must be the lesser of—

- (a) 4 years pensionable service; and
- (b) the pensionable service the Optant could have counted if the Optant had continued in service until reaching age 60.

(5) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

### **Treatment of ill health retirement applications made by 2008 Section Optants within one year of joining this Section of the scheme**

**3.K.13.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) submits a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes

of an ill health pension payable in accordance with regulation 3.D.7 (early retirement on ill health: active members and non-contributing members); and

- (b) that form and supporting medical evidence is received by the Scottish Ministers before the end of the period of one year commencing on the day the Scottish Ministers received the Optant's option to join this Section of the scheme.

(2) Subject to paragraph (3) if, following a consideration of the form and medical evidence referred to in paragraph (1) an Optant referred to in that paragraph becomes entitled to a pension under regulation 3.D.7(3) (“an upper tier ill health pension”)—

- (a) that Optant's pensionable service must be increased by the enhancement period determined in accordance with whichever of regulation 3.K.12(3) or (4) apply to the Optant; and
- (b) the transitional enhancement period must apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 3.D.7(6).

(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

**Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill health retirement under the 1995 Section**

**3.K.14.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) submitted a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations; and
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the date on which the Scottish Ministers received the Optant's option to join this Section of the scheme.

(2) If, following a consideration of the form and medical evidence referred to in paragraph (1), an Optant referred to in that paragraph becomes entitled to a pension under regulation 3.D.7(2) (early retirement on ill health: active members and non-contributing members) (“a lower tier ill health pension”)—

- (a) within a period of one year beginning with the day on which that Optant's option to join this Section of the scheme is received; and
- (b) immediately before joining this Section of the scheme the Optant was notified under regulation E4 (re-assessment of ill health condition determined under regulation E3) of the 2011 Regulations that the Optant may ask the Scottish Ministers to consider whether that Optant subsequently meets the upper tier condition under that regulation,

that Optant must be entitled to a re-assessment of entitlement to an ill health pension determined under regulation 3.D.8 (re-assessment of entitlement to an ill health pension) in accordance with the following paragraphs of this regulation.

(3) For the purposes of assessing whether the Optant satisfies the condition in regulation 3.D.7(3) (a) at the date of the Scottish Ministers' review, “permanently” means until age 60.

(4) If, after considering the further medical evidence provided by the Optant under regulation 3.D.8, the Scottish Ministers determine that the Optant meets the condition in 3.D.7(3) (a), then as from the date on which that determination is made the Optant—

- (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 3.D.7 but which must be calculated in accordance with paragraph (5).
- (5) Subject to paragraph (6), for the purpose of calculating the upper tier ill health pension referred to in paragraph (4)—
  - (a) the Optant's service must be increased by the transitional enhancement period determined in accordance with whichever of regulation 3.K.12(3) or (4) apply to that Optant; and
  - (b) the transitional enhancement period must apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to that Optant's service under regulation 3.D.7(6).
- (6) In the case of an Optant to whom this regulation applies—
  - (a) regulation 3.K.12(3) must be read as if the definition of “the Optant's assumed pensionable service” included the words “from the date of the Scottish Ministers' determination under regulation 3.D.8” after “continued in service”; and
  - (b) references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

**Application of regulation 3.D.8 where a 2008 Section Optant has submitted an application for ill health retirement under this Section of the scheme within a year of joining this Section of the scheme**

- 3.K.15.**—(1) This regulation applies to a 2008 Section Optant who—
- (a) submits a form AW8 (or such other form as the Scottish Ministers are willing to accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation 3.D.7 (early retirement on ill health: active members and non-contributing members);
  - (b) that form and supporting medical evidence was received by the Scottish Ministers before the end of the period of one year commencing on the day the Scottish Ministers received the Optant's option to join this Section of the scheme; and
  - (c) following a consideration of the form and medical evidence referred to in sub-paragraph (a)—
    - (i) the Optant becomes entitled to a lower tier ill health pension under regulation 3.D.7; and
    - (ii) at the time the Optant is awarded a pension under that regulation the Scottish Ministers give the Optant notice in writing in accordance with regulation 3.D.8(1) (b) (re-assessment of entitlement to an ill health pension) that the Optant's case may be considered once within a period of three years commencing with the date of that award to determine whether the Optant meets the condition in regulation 3.D.7(3) (a) at the date of such a consideration.
- (2) If, after considering the further medical evidence provided by the Optant under regulation 3.D.8, the Scottish Ministers determine that the Optant meets the condition in 3.D.7(3) (a), then as from the date on which that determination is made the Optant—
- (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 3.D.7 but which must be calculated in accordance with paragraph (3).
- (3) Subject to paragraph (4) for the purpose of calculating the upper tier ill health pension referred to in paragraph (2)—
- (a) the Optant's service must be increased by the transitional enhancement period determined in accordance with whichever of regulation 3.K.12(3) or (4) applies to the Optant; and

- (b) the transitional enhancement period must apply to that Optant's service in place of the enhancement period that, apart from this regulation, would otherwise apply to the Optant's service under regulation 3.D.7(6).
- (4) In the case of an Optant to whom this regulation applies—
  - (a) regulation 3.K.12(3) must be read as if the definition of “the Optant's assumed pensionable service” included the words “from the date of the Scottish Ministers' determination under regulation 3.D.8” after “continued in service”; and
  - (b) references to the “enhancement period” in regulation 3.D.7 are to be read as references to the “transitional enhancement period” determined under this regulation.

**Transitional provision: treatment of additional service and pensionable earnings in respect of Optants retiring on the grounds of ill health**

**3.K.16.**—(1) This regulation applies to a 2008 Section Optant who, apart from this regulation, would be entitled to count a period of pensionable service determined in accordance with regulation 3.K.5(3) (treatment of additional service and pensionable earnings).

(2) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence if not included on the form pursuant to regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations;
- (b) that form and supporting medical evidence was received by the Scottish Ministers before the end of a period of one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q5 (paying by regular additional contributions) of the 2011 Regulations (as modified by paragraph 26 of Schedule 1 to those Regulations); and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a), that Optant becomes entitled to a lower tier ill health pension or an upper tier ill health pension under regulation 3.D.7 (early retirement on ill health: active members and non-contributing members) within a period of one year beginning with the day on which the Optant's option to join this Section of the scheme is received,

that Optant is not entitled to count a period of pensionable service under regulation 3.K.5 and—

- (i) an amount equal to the contributions (less any tax that may be payable) made by the Optant in respect that period of additional service must be returned to the Optant in accordance with regulation Q7(2) (part payment for additional service or unreduced retirement lump sum) of the 2011 Regulations; and
- (ii) regulation 3.K.5(8) does not apply.

(3) If—

- (a) an Optant referred to in paragraph (1) submitted a form AW8 (or such other form as the Scottish Ministers were willing to accept) together with supporting medical evidence (if not included on the form) pursuant to regulation E3 of the 2011 Regulations;
- (b) that form and supporting medical evidence was received by the Scottish Ministers after a period of at least one year commencing on the date on which the Optant commenced payment for a period of additional service under regulation Q5 of the 2011 Regulations; and
- (c) following a consideration of the form and medical evidence referred to in subparagraph (a), that Optant becomes entitled to a lower tier ill health pension or an upper

tier ill health pension under regulation 3.D.7 within a period of one year beginning with the day on which the Optant's option to join this Section of the scheme is received, in addition to the pensionable service that Optant is entitled to count under regulation 3.K.5, that Optant is also entitled to count a period of pensionable service determined under paragraph (4).

(4) The period of pensionable service that an Optant is entitled to count under this regulation must be a period of service equal to the difference between—

- (a) the period of service the Optant is entitled to count under regulation 3.K.5; and
- (b) the period of service the Optant elected to purchase under regulation Q1 (right to buy additional service) of the 2011 Regulations (as modified by paragraph 26 of Schedule 1 to those Regulations) calculated in accordance with regulation Q7(3) and (4) (part payment for additional service or unreduced retirement lump sum) of the 2011 Regulations (as modified by paragraph 26 of Schedule 1 to those Regulations) and as if the member had become entitled to a pension under regulation E3 of those Regulations on the day the Scottish Ministers received that person's option to join this Section of the scheme.

(5) For the purposes of calculating the Optant's benefits under this Section of the scheme, the pensionable service the Optant is entitled to count under paragraph (4) is to be added to the service the member is entitled to count under regulation 3.K.3(3).

### **Treatment of service credited from the 1995 Section when benefits in cases of mixed service are payable**

**3.K.17.**—(1) This regulation applies if a 2008 Section Optant who becomes a member of this Section of the scheme—

- (a) is entitled to benefits under this Part;
- (b) has a period, or periods, of officer service under Part 2 that entitles the Optant to have benefits considered under Part 4 (benefits in cases of mixed service); and
- (c) has transferred—
  - (i) service up to 31st March 2008 from the 1995 Section that counts under regulation 2.K.3; or
  - (ii) service and pensionable earnings up to 31st March 2008 from the 1995 Section that counts under regulation 3.K.3.

(2) Subject to paragraphs (4) and (5), if paragraph (1) applies—

- (a) pensionable service transferred from the 1995 Section under regulation 2.K.3(4) counts at the full length determined before application of the factor specified in that regulation, for the purpose of comparing benefits payable as calculated in accordance with regulations 4.B.2 to 4.B.8;
- (b) pensionable service transferred from the 1995 Section under regulation 2.K.3(4) and pensionable earnings transferred from the 1995 Section under regulation 3.K.3(4) counts at the length or value determined after the application of the factor specified in those regulations for the purpose of calculating—
  - (i) any reference amount referred to regulations 4.B.2 to 4.B.8; and
  - (ii) any top up amount referred to in regulation 4.C.1 or, as the case may be, regulation 4.C.2.

(3) This paragraph applies if a 2008 Section Optant has—

- (a) officer service that counts under regulation 2.K.3(4); or
- (b) pensionable earnings in respect of practitioner service that counts under regulation 3.K.3(4); and

- (c) that officer service or those pensionable earnings comprise two or more periods (separated by at least one day) of such service or two or more periods (separated by at least one day) in respect of which such earnings were earned.
- (4) Where paragraph (3) applies, each separate period of officer service or each separate period in respect of which pensionable earnings were earned, must be calculated using the formula set out in paragraph (5) for the purposes of calculating—
- (a) any reference amount referred to in regulations 4.B.2 to 4.B.8; and
- (b) any top up amount referred to in regulation 4.C.1 or, as the case may be, regulation 4.C.2.
- (5) That formula is—
- (a) where paragraph (3)(a) applies—

$$TNS \times \frac{PGS}{TGS}$$

where—

*TNS* is the total (net) service transferred to this Section of the scheme in regulation 2.K.3(4), after multiplying by the factor applicable to the case;

*PGS* is any part (gross) period of service within the total transferred to this Section of the scheme in regulation 2.K.3(4), before multiplying by the factor applicable to the case; and

*TGS* is the total (gross) service transferred to this Section of the scheme in regulation 2.K.3(4); and

where paragraph (3)(b) applies—

$$TNE \times \frac{PGE}{TGE}$$

where—

*TNE* is the total (net) pensionable earnings transferred to this Section of the scheme in regulation 3.K.3(4), after multiplying by the factor applicable to the case;

*PGE* is any part (gross) amount of pensionable earnings within the total transferred to this Section of the scheme in regulation 3.K.3(4), before multiplying by the factor applicable to the case; and

*TGE* is the total (gross) amount of pensionable earnings transferred to this Section of the scheme in regulation 3.K.3(4).

**Circumstances in which a member of the 1995 Section may defer making an option to join this Section of the scheme under regulation 3.K.2**

**3.K.18.**—(1) This regulation applies to a person who—

- (a) on, or after, 1st October 2009—
- (i) is an active member of the 1995 Section; or
- (ii) is a member of that Section who is absent from work because of illness or injury and whose earnings have ceased in the circumstances described in regulation P2(3) (absence because of illness or injury) of the 2011 Regulations;

- (b) submitted a form AW8 (or such other form as the Scottish Ministers accept) together with supporting medical evidence (if not included on the form) for the purposes of an ill health pension payable in accordance with regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations;
- (c) that form and supporting medical evidence was received by the Scottish Ministers—
  - (i) before the date on which a comparative statement of benefits under the 1995 Section and this Section of the scheme is sent to the person (whether by electronic communication or otherwise) in accordance with regulation 3.K.2 (option for a member of the 1995 Section to join this Section of the scheme); or
  - (ii) such a statement has been issued to that person, before the date specified by the Scottish Ministers for the purposes of paragraph (3) of that regulation.
- (2) A person to whom paragraph (1) applies may opt to join this Section of the scheme in accordance with paragraph (3).
- (3) Subject to paragraph (4), the option under paragraph (2) may only be exercised if—
  - (a) the person gives notice in writing to the scheme administrator in such form as the Scottish Ministers require; and
  - (b) that notice is received by the scheme administrator within a period of four months starting with the day on which—
    - (i) that person is sent a written notification of the Scottish Ministers' decision as to whether, in consideration of the form and medical evidence referred to in paragraph (1), that person has met the lower tier or the upper tier condition specified in regulation E3 (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations (“the first decision”);
    - (ii) that person is sent a written notification of the Scottish Ministers' decision in respect of the stage 1 dispute (“stage 1 decision”);
    - (iii) that person is sent a written notification of the Scottish Ministers' decision in respect of the stage 2 dispute (“stage 2 decision”); or
    - (iv) that person is sent written notification of the final determination by the Pensions Ombudsman.
- (4) Paragraph (3) must cease to apply to any person if at any time that person—
  - (a) returns to practitioner service; or
  - (b) claims a pension under regulation E11 (early retirement pension (with actuarial reduction)) or E12 (preserved pension) of the 2011 Regulations.
- (5) In this regulation—
  - “stage 1 dispute” means a request made to the Scottish Ministers for a review of the first decision under section 50 (resolution of disputes) of the 1995 Act, that is received by the Scottish Ministers within a period of 6 months starting with the date on which that person was sent written notification of the original decision;
  - “stage 2 dispute” means a request made to the Scottish Ministers to review the stage 1 decision under section 50 of the 1995 Act that is received by the Scottish Ministers within a period of 6 months starting with the day on which that person is sent a written notification of a stage 1 decision; and
  - “final determination by the Pensions Ombudsman” means a written determination under section 151 (determinations of the Pensions Ombudsman) of the 1993 Act made as the result of the investigation of a complaint by the person in respect of the stage 2 decision that was received by the Pensions Ombudsman within a period of three years starting with the day on which the person is sent written notification of the stage 2 decision.

**Nominations and notices accepted by the Scottish Ministers under the 2011 Regulations to apply under Chapter 3.E**

- 3.K.19.**—(1) This regulation applies if—
- (a) the Scottish Ministers have accepted any of the nominations or notices specified in paragraph (2) in respect of the benefits to be paid on the death of a person who is a member of the 1995 Section; and
  - (b) on the day that the Scottish Ministers receive that person's option to join this Section of the scheme, that person has not revoked that nomination or notice.
- (2) The nominations and notices referred to in paragraph (1) are—
- (a) a nomination made in accordance with regulation F5 (payment of lump sum) of the 2011 Regulations in favour of one or more persons in respect of any lump sum that becomes payable under regulations F1 to F4 (lump sum on death) of the 2011 Regulations;
  - (b) a notice provided for the purposes of regulation F5(3)(a) of the 2011 Regulations that the person's surviving partner (within the meaning of that regulation) is not to receive the payment of any lump sum that becomes payable under regulations F1 to F4 of the 2011 Regulations;
  - <sup>F1</sup>(c) .....
- (3) For the purpose of this Section of the scheme a nomination or notice referred to in paragraph (1) must be treated—
- (a) in the case of the nomination referred to in paragraph (2)(a) as if that nomination has been accepted by the Scottish Ministers as a notice for the purposes of regulation 3.E.22 (payment of lump sums or pensions on death);
  - (b) in the case of a notice referred to in paragraph (2)(b) as if that notice had been accepted by the Scottish Ministers as a notice for the purposes of regulation 3.E.22 specifying that the Optant's personal representatives are to receive any lump or pension on the death of the Optant; and
  - (c) in the case of a notice referred to in paragraph (2)(c) as if that notice had been accepted by the Scottish Ministers as a declaration for the purposes of regulations 3.E.2 (meaning of “surviving nominated partner”).

**Textual Amendments**

**F1** [Reg. 3.K.19\(2\)\(c\)](#) omitted (1.4.2021) by virtue of [The National Health Service Superannuation and Pension Schemes \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/102\)](#), regs. 1(2), 43

**Late payment of pension with actuarial increase for a 2008 Section Optant**

- 3.K.20.**—(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 3.D.1 (normal retirement pensions) after reaching age 65.
- (2) Subject to paragraph (6), in the case of an Optant to whom paragraph (1) applies so much of the amount of the pension as is attributable to—
- (a) the pensionable service that Optant is entitled to count under—
    - (i) regulation 3.K.3 (service and pensionable earnings credited from the 1995 Section);
    - (ii) regulation 3.K.5 (treatment of additional service and pensionable earnings) (if any);
- and

- (iii) this Section of the scheme on or after 1st April 2008 but before reaching age 65; and
- (b) any contributions paid under regulation 3.C.6 (periodical contributions), 3.C.8 (lump sum contribution) or 3.C.9 (lump sum contributions by employing authority) before reaching that age,

is to be increased in accordance with paragraph (4).

(3) In paragraph (2) the reference to the amount of the pension is to the amount of pension—

- (a) before that pension had been reduced in accordance with regulation 3.K.10; and
- (b) before any commutation under regulation 3.D.10 (option to exchange part of pension).

(4) The amount of the increase referred to in paragraph (2) must be calculated in accordance with guidance and tables provided by the scheme actuary to the Scottish Ministers for the purposes of this regulation.

(5) 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—

- (a) the period after reaching age 65 before the Optant becomes entitled to immediate payment of the pension; and
- (b) the life expectancy of the Optant.

(6) The increase must apply to the Optant's pension in place of the actuarial increase that, apart from this regulation, would otherwise apply to the Optant's pension under regulation 3.D.3 (late payment of pension with actuarial increase).

### **2008 Section Optants who are in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations**

**3.K.21.**—(1) This regulation applies to a 2008 Section Optant who—

- (a) is entitled to a lower tier ill health pension under regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations in respect of service in the 1995 Section (“the earlier 1995 Section service”); and
- (b) becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill health pension under regulation 3.D.7 (early retirement on ill health: active members and non-contributing members) in respect of service in this Section of the scheme (“the later 2008 Section service”).

(2) For the purposes of determining whether an Optant can count 45 years of pensionable service for any purpose, the earlier 1995 Section service and the later 2008 Section service are aggregated.

(3) If, on the termination of the later 2008 Section service the Optant becomes entitled, under regulation 3.D.7, to—

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

in respect of the later 2008 Section service, the Optant is entitled to the benefits set out in paragraph (4).

(4) Subject to paragraph (5) and regulations 3.K.12 to 3.K.15 and 3.K.16, the benefits mentioned in paragraph (3) are—

- (a) the member's lower tier ill health pension under regulation E3 of the 2011 Regulations in respect of the member's earlier 1995 Section service; and
- (b) a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of the member's later 2008 Section service.

(5) If the Optant—

- (a) ceases to be entitled to a lower tier ill health pension in respect of the earlier 1995 Section service;
- (b) becomes entitled to an upper tier ill health pension in respect of that earlier 1995 Section service in accordance with regulation E4 (re-assessment of ill health condition determined under regulation E3) of the 2011 Regulations; and
- (c) becomes entitled to a lower tier ill health pension or, as the case may be, an upper tier ill health pension in respect of later 2008 Section service on the termination of that later service,

the Optant is entitled to the benefits set out in paragraph (6).

(6) Those benefits are—

- (a) an upper tier ill health pension paid in accordance with regulation E4 (re-assessment of ill health condition determined under regulation E3) of the 2011 Regulations in respect of the earlier 1995 Section service; and
- (b) a lower tier ill health pension in respect of the later 2008 Section service.

**Lump sum payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations**

**3.K.22.—**(1) This regulation applies to a 2008 Section Optant who, on the date of that Optant's death—

- (a) is entitled to a lower tier ill health pension under regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations in respect of service in the 1995 Section; and
- (b) is an active or a non-contributing member in respect of service in this Section of the scheme (“the later 2008 Section service”).

(2) The lump sum payable on the death of an Optant referred to in paragraph (1) must be—

- (a) calculated in accordance with whichever of paragraph (3), (4) or (5) applies to that Optant; and
- (b) paid in place of the lump sum that, apart from this regulation, would otherwise be payable in respect of that Optant's later 2008 Section service under regulation 3.E.17 (amount of lump sum: single capacity members and recent leavers).

(3) If the deceased Optant was, at the date of the Optant's death, an active member who had not exercised the option under regulation 3.D.5 (partial retirement: members aged at least 55), the lump sum referred to in paragraph (2)(a) is an amount equal to 5 times the annual rate of pension—

- (a) payable under regulation 3.D.7(5) (upper tier ill health pension), if the deceased Optant had not reached age 65; or
- (b) payable under regulation 3.D.1 (normal retirement pensions), if the deceased Optant had reached age 65,

to which the deceased Optant would have been entitled at the date of the Optant's death.

(4) If the deceased Optant was a non-contributing member who had not exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) is an amount equal to 5 times the annual rate of pension—

- (a) payable under regulation 3.D.7(5) (upper tier ill health pension), if the deceased Optant had not reached age 65; or
- (b) payable under regulation 3.D.1 (normal retirement pensions), if the deceased Optant had reached age 65,

to which the Optant would have been entitled on the last day of the Optant's pensionable service.



(5) If the Optant was an active member or a non-contributing member who had exercised the option under regulation 3.D.5, the lump sum referred to in paragraph (2)(a) must be determined by the Scottish Ministers after taking advice from the scheme actuary.

**Children's pensions payable on the death of a 2008 Section Optant who is in receipt of a lower tier ill health pension under regulation E3 of the 2011 Regulations**

**3.K.23.**—(1) This regulation applies to a 2008 Section Optant (“a deceased Optant”) who, in respect of service in this Section of the scheme (“the later active 2008 Section service”), was—

(a) at the date of the Optant's death—

- (i) an active member;
- (ii) a non-contributing member;
- (iii) a pensioner member; or
- (iv) a deferred member; and

(b) on that date was entitled to a lower tier ill health pension under regulation E3 (early retirement on ill health grounds (post 1st April 2008)) of the 2011 Regulations in respect of service in the 1995 Section (“the earlier 1995 Section service”).

(2) In the case of a deceased Optant referred to in paragraph (1)(a)(i) and (ii), “the basic death pension” for the purposes of regulation 3.E.10(3) (amount of surviving child's pension: active members and non-contributing members) means 75% of the deceased member's pension under regulation 3.D.1 (normal retirement pensions) and—

(a) in the case of a deceased Optant who was, at the date of the Optant's death, an active member that pension includes the greater of—

(i) any increase due to such enhancement period that would have applied for the purposes of regulation 3.D.7(5) (upper tier ill health pension) if the deceased Optant had become entitled to an upper tier ill health pension at that date; and

(ii) the deceased Optant's later 2008 Section service as an active member plus the difference between—

(aa) the aggregate of the deceased Optant's earlier 1995 Section service and the later 2008 Section service as an active member; and

(bb) 10 years pensionable service,

where the amount of service in sub-head (aa) is less than that specified in sub-head (bb); and

(b) in the case of a deceased Optant referred to in paragraph (1)(a)(ii) the pensionable service that the deceased Optant was entitled to count under this Section of the scheme on the date of Optant's death.

(3) In the case of a deceased Optant referred to in paragraph (1)(a)(iii), “the basic death pension” for the purposes of regulation 3.E.11(3) (amount of surviving child's pension: pensioner members) means the greater of—

(a) 75% of the deceased Optant's annual pension (disregarding any additional pension); and

(b) 75% of the annual pension to which the deceased Optant would have been entitled in respect of the aggregate of the deceased Optant's later 2008 Section service plus the difference between—

(i) the aggregate of the Optant's earlier 1995 Section service and the later 2008 Section service; and

(ii) 10 years pensionable service,

where the amount of service in head (i) is less than that specified in head (ii).

(4) In the case of a deceased Optant referred to in paragraph (1)(a)(iv), “the basic death pension” for the purposes of regulation 3.E.12(3) (amount of surviving child's pension: deferred members) means—

- (a) if the deceased died within 12 months after ceasing to be an active member or a non-contributing member, the amount that would be the basic death pension for the purposes of regulation 3.E.10 (active member and non-contributing members) if the deceased Optant had died on the day of so ceasing (disregarding any additional pension); and
- (b) if the deceased died more than 12 months after ceasing to be an active member or a non-contributing member, the greater of—
  - (i) 75% of the pension to which the deceased would have been entitled if the deceased had become entitled to a pension under regulation 3.D.1 (normal retirement pensions) on the date of death (disregarding any additional pension); and
  - (ii) 75% of the annual pension to which the deceased would have been entitled in respect of the aggregate of the deceased Optant's later 2008 Section service that has been deferred plus the difference between—
    - (aa) the aggregate of the Optant's earlier 1995 Section service and the later 2008 Section service that has been deferred; and
    - (bb) 10 years pensionable service,

where the amount of service in sub-head (aa) is less than that specified in sub-head (bb).

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, CHAPTER 3.K.