
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 174

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

PART 3

BENEFITS FOR PRACTITIONERS, ETC.

CHAPTER 3.D

MEMBERS' RETIREMENT BENEFITS

Entitlement to pensions

Partial retirement: members aged at least 55

3.D.5.—(1) An active member or a non-contributing member may exercise an option under this regulation if—

- (a) the member has reached age 55 and—
 - (i) continues to be employed in the employment in which the member is an active member or a non-contributing 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 3.D.1(1)(b)(i) (normal retirement pensions), if the member had—
 - (i) reached age 65;
 - (ii) ceased to be so employed; and
 - (iii) claimed payment of the pension;
- (c) the terms on which the member engages in 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 member's engagement in such employment reduces to 90% or less of its pre-change level.

(2) The option may only be exercised by notice in writing in such form as the Scottish Ministers require and must be accompanied by—

- (a) appropriate supporting evidence; and
 - (b) a statement in writing approved by the contracting Health Board or someone appointed on its behalf that the conditions in paragraph (1)(c) and (d) are met.
- (3) 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).
- (4) A member who duly exercises the option under this regulation is entitled—
 - (a) in the case of a member who has reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 3.D.1 (normal retirement pensions) if the member had ceased to be employed on the option day (disregarding any additional pension, but subject to any increase under regulation 3.D.3 (late payment of pension with actuarial increase));
 - (b) in the case of a member who has not reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 3.D.4 (early payment of pension with actuarial reduction) if the member had ceased to be employed on the option day (disregarding any additional pension); and
 - (c) if the option specifies 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 3.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 3.D.4 if the member had so ceased.
- (5) 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 3.D.10 (general option to exchange part of pension for lump sum) and disregarding any additional pension)—
 - (i) is not less than 20% of the pension that would have been payable if the member had ceased to be employed in all the member’s employments 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% 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 20% of the amount of the pension that would have been payable if the member had ceased to be employed in all the member’s employments at the end of the option day (disregarding any additional pension).
- (6) The option under this regulation may only be exercised on no more than two 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.
- (7) In this regulation—
 - a member’s “employment” means practitioner service together with any concurrent NHS employment and “terms of employment” must be construed accordingly;
 - “the option day” means the day before the reduction referred to in paragraph (1)(d) by virtue of which the option is exercisable takes effect;
 - “pension” means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of the member’s employments and, in the case of practitioner services, the pensionable earnings taken into account when working out

the pension will be drawn from the latest certificate referred to in regulation 3.J.14, or the latest scheme year's final pensionable earnings referred to in regulation 3.C.2 (members' contribution rate), and agreed with each relevant Health Board or someone appointed to act on its behalf or employer; and

“pre-change level” means the level of the member's engagement in the employment referred to in paragraph (1)(a) during the period of 12 months ending with the option day.

- (8) For the purposes of this Part, a member who has exercised the option under this regulation—
- (a) is a pensioner member as respects the specified percentage of the pension to which the member is immediately entitled as a result of exercising the option and the percentage of the pensionable service that 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 or a non-contributing 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 or a non-contributing member on the option day as does not fall within subparagraph (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.
- (9) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.