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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 142**

**The Police Pension Scheme (Scotland) Regulations 2015**

**PART 7**

**Retirement benefits**

**CHAPTER 1**

**General**

**Application of Part**

77.—(1) This Part applies in relation to retirement benefits payable in respect of a continuous period of pensionable service under this scheme (“period of service”).

(2) In this Part, “active member”, in relation to this scheme, means a person—

- (a) who is an active member of this scheme; or
- (b) who, for the purpose of determining entitlement to payment of benefits to or in respect of the member, is taken to be an active member of this scheme<sup>(1)</sup>.

**Qualifying service**

78.—(1) In these Regulations, “qualifying service” means the total of—

- (a) any continuous period of pensionable service under this scheme not counting—
  - (i) any gap in service;
  - (ii) any career break;
  - (iii) any other period of unpaid leave;
- (b) if a transfer payment has been received by this scheme in respect of a member’s accrued rights under another occupational pension scheme, the member’s period of pensionable service under that scheme;
- (c) for a 2006 transition member with continuity of service, the member’s period of pensionable service under the 2006 scheme before the member’s transition date<sup>(2)</sup>; and
- (d) for a 1987 transition member with continuity of service, the period of pensionable service the member is entitled to reckon under the 1987 scheme before the member’s transition date<sup>(3)</sup>.

(2) In calculating the member’s qualifying service, a period of part-time service under this scheme or under the existing police pension scheme counts as if it were a period of full-time service.

(3) None of the following is counted when calculating qualifying service—

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(1) See Chapter 1 of Part 4 (active membership) for when a member of the police force is taken to be an active member of this scheme.  
(2) This includes any service transferred into the 2006 scheme before the member’s transition date.  
(3) This includes any service transferred into the 1987 scheme before the member’s transition date.

- (a) any pensionable service under this scheme in respect of which a person's rights under this scheme are extinguished(4);
- (b) any pensionable service under the existing police pension scheme in respect of which a person's rights under that scheme are extinguished;
- (c) any service transferred into the 1987 scheme after the member's closing date;
- (d) any unauthorised absence from eligible service.

### **Descriptions of full retirement pension**

79. For the purpose of this Part, the descriptions of full retirement pension are—

- (a) retirement standard earned pension;
- (b) retirement club transfer earned pension;
- (c) retirement added (self only) pension; and
- (d) retirement added (all beneficiaries) pension.

## CHAPTER 2

### Full retirement benefits

#### **Entitlement to full retirement pension (active members)**

80.—(1) An active member of this scheme who has reached normal minimum pension age (P) is entitled to payment for life of a retirement earned pension if—

- (a) P has ceased to be in pensionable service under this scheme;
- (b) P has at least 2 years' qualifying service or a transfer payment otherwise than from another occupational pension scheme has been received by this scheme in relation to the member;
- (c) P has left eligible service; and
- (d) P claims payment of a full retirement pension under regulation 82 (claim - active members).

(2) On becoming entitled to payment for life of a retirement earned pension, P is entitled to payment for life of a retirement added pension of any description if the retirement account specifies an amount of retirement added pension of that description.

#### **Entitlement to full retirement pension (deferred members)**

81.—(1) A deferred member of this scheme is entitled to payment for life of a retirement earned pension if paragraph (2), (3) or (4) applies.

(2) This paragraph applies if—

- (a) the member has reached the member's state pension age;
- (b) the member has at least 2 years' qualifying service or a transfer payment otherwise than from another occupational pension scheme has been received by this scheme in relation to the member; and
- (c) the member has left eligible service.

(3) This paragraph applies if—

- (a) the member has not reached the member's state pension age;

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(4) Regulation 167 provides for extinguishment of rights following the refund of all members' contributions and payments for added pension made by the member. Regulation 176 provides for extinguishment of rights following the making of a transfer value payment.

- (b) the member has left eligible service;
  - (c) the selected medical practitioner gives a report under regulation 76 (early payment on grounds of permanent medical unfitness) that the member is permanently medically unfit for engaging in any regular employment; and
  - (d) the member is eligible under this scheme for payment of ill-health benefits<sup>(5)</sup>.
- (4) This paragraph applies if—
- (a) the member has reached normal minimum pension age but has not reached the member's state pension age;
  - (b) the member has at least 2 years' qualifying service or a transfer payment otherwise than from another occupational pension scheme has been received by this scheme in relation to the member;
  - (c) the member has left eligible service; and
  - (d) the member claims payment of a full retirement pension under regulation 86 (claim for early payment otherwise than on grounds of permanent medical unfitness (deferred members)).
- (5) On becoming entitled to payment for life of a retirement earned pension, P is entitled to payment for life of a retirement added pension of any description if the deferred member's account specifies a provisional amount of the relevant deferred added pension.
- (6) In this regulation, "relevant deferred added pension" means—
- (a) for a retirement added (self only) pension, a deferred added (self only) pension;
  - (b) for a retirement added (all beneficiaries) pension, a deferred added (all beneficiaries) pension.

#### **Claim for payment of full retirement pension (active members)**

- 82.**—(1) This regulation applies in relation to an active member of this scheme.
- (2) A claim for payment of a full retirement pension—
- (a) may only be made by written notice to the scheme manager; and
  - (b) must comply with the notice period specified in regulation 83.
- (3) If the member claims payment of the pension before reaching normal pension age under this scheme, the notice must state if the member has opted to buy out the early payment reduction.
- (4) A full retirement pension calculated under regulation 88 (active members) is payable to the member in respect of each month as from the member's last day of eligible service.

#### **Notice period for active members**

- 83.**—(1) The following members must give at least 3 months' notice of intent to claim the pension—
- (a) an inspector of constabulary (other than an assistant inspector of constabulary);
  - (b) a member of the police force holding one of the following ranks—
    - (i) Chief Constable;
    - (ii) Deputy Chief Constable; or
    - (iii) Assistant Chief Constable.
- (2) The following members must give at least one month's notice of intent to claim the pension—

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(5) See Chapter 4 of Part 4 for when a member is eligible under this scheme for payment of ill-health benefits.

- (a) an assistant inspector of constabulary;
  - (b) a member of the police force holding a rank not mentioned in paragraph (1).
- (3) For the purpose of this regulation, a person engaged on relevant service is deemed to hold the rank to which the member is entitled to revert at the end of the period of relevant service.
- (4) The scheme manager may in its discretion accept a shorter notice period determined by the scheme manager.

**Full retirement pension payable at member’s state pension age (deferred members)**

- 84.**—(1) This regulation applies in relation to a deferred member of this scheme who becomes entitled under regulation 81(2) to payment of a full retirement pension on reaching the member’s state pension age.
- (2) For the purpose of an appeal to the sheriff under regulation 197 or an appeal to a tribunal under regulation 198, the member is taken to claim payment of the full retirement pension when the member reaches the member’s state pension age.
- (3) A full retirement pension calculated under regulation 89 (deferred members) is payable to the member in respect of each month as from the day on which the member reaches the member’s state pension age.

**Full retirement pension payable early on grounds of permanent medical unfitness (deferred members)**

- 85.**—(1) This regulation applies in relation to a deferred member of this scheme who becomes entitled under regulation 81(3) to payment of a full retirement pension on grounds of permanent medical unfitness.
- (2) For the purpose of an appeal to the sheriff under regulation 197 or an appeal to a tribunal under regulation 198, the deferred member is taken to claim payment of the full retirement pension on the earlier of—
- (a) the date on which the deferred member asked the employer to refer the questions to the selected medical practitioner under regulation 76; or
  - (b) the date on which the employer referred those questions on its own initiative.
- (3) A full retirement pension calculated under regulation 89 (deferred members) is payable to the member in respect of each month as from the date on which the member is taken to claim payment of the pension under paragraph (2).

**Claim for early payment of full retirement pension otherwise than on grounds of permanent medical unfitness (deferred members)**

- 86.**—(1) A deferred member of this scheme who claims early payment of a full retirement pension otherwise than on grounds of permanent medical unfitness must give at least one month’s notice of intent to claim payment of the pension.
- (2) The claim for payment of the pension may only be made by written notice to the scheme manager.
- (3) The notice—
- (a) must state if the member has opted to buy out the early payment reduction; and
  - (b) must specify the date from which payment of the pension is claimed.
- (4) A full retirement pension calculated under regulation 89 (deferred members) is payable to the member in respect of each month as from the date specified in the notice.

### **Members who have been dismissed or required to resign**

**87.**—(1) This regulation applies to a member of the police force—

- (a) who is dismissed or is required to resign; and
- (b) who has reached normal minimum pension age.

(2) This paragraph applies if the member has at least 2 years' qualifying service or a transfer payment otherwise than from another occupational pension scheme has been received by this scheme in relation to the member.

(3) If paragraph (2) does not apply, the member is entitled to a refund of all member contributions and payments for added pension under Part 10 (contributions).

(4) If paragraph (2) applies, unless the member chooses to defer payment of the pension—

- (a) for the purpose of an appeal to the sheriff under regulation 197 or an appeal to a tribunal under regulation 198, the member is taken to claim payment of a full retirement pension on the date of dismissal; and
- (b) the member is entitled to payment for life of a full retirement pension calculated under regulation 88 (active members) in respect of each month as from the date of dismissal.

(5) If paragraph (2) applies and the member chooses to defer payment of the pension, the member becomes entitled to payment for life of a full retirement pension—

- (a) under regulation 81(2) when the member reaches the member's state pension age; or
- (b) under regulation 81(4), if the member claims early payment of the pension under regulation 86 (claim for early payment otherwise than on grounds of permanent medical unfitness (deferred members)).

### **Annual rate of full retirement pension (active members)**

**88.**—(1) This regulation applies when an active member of this scheme becomes entitled to payment for life of a full retirement pension.

(2) The annual rate of each description of full retirement pension payable to the member is calculated by—

- (a) taking the amount of that description of full retirement pension specified in the retirement account;
- (b) subtracting the early payment reduction (if any) specified in that account in relation to that amount; and
- (c) subtracting the commutation amount (if any) specified in that account in relation to that amount.

(3) The annual rate of any description of full retirement pension is calculated without subtracting the early payment reduction if the member buys out the early payment reduction in relation to that description of full retirement pension.

### **Annual rate of full retirement pension (deferred members)**

**89.**—(1) This regulation applies when a deferred member of this scheme becomes entitled to payment for life of a full retirement pension.

(2) The annual rate of any description of full retirement pension payable to the member is calculated by—

- (a) taking the provisional amount of the relevant description of deferred pension specified in the deferred member's account;

- (b) adding the late payment supplement (if any) specified in that account in relation to that provisional amount;
  - (c) subtracting the early payment reduction (if any) specified in that account in relation to that amount; and
  - (d) subtracting the commutation amount (if any) specified in that account in relation to that amount.
- (3) The annual rate of any description of full retirement pension is calculated without subtracting the early payment reduction if—
- (a) the member buys out the early payment reduction in relation to that description of full retirement pension; or
  - (b) the full retirement pension comes into payment early on grounds of permanent medical unfitness<sup>(6)</sup>.
- (4) In this regulation, “the relevant description of deferred pension” means—
- (a) for a retirement standard earned pension, deferred standard earned pension;
  - (b) for a retirement club transfer earned pension, deferred club transfer earned pension;
  - (c) for a retirement added (self only) pension, deferred added (self only) pension; and
  - (d) for a retirement added (all beneficiaries) pension, deferred added (all beneficiaries) pension.

### **Full retirement pension ceasing to be payable**

**90.**—(1) A full retirement pension ceases to be payable to a member who re-enters pensionable service under this scheme within 28 days after the last day of the service in relation to which the pension was payable.

- (2) If paragraph (1) applies in relation to a member—
- (a) the scheme manager must—
    - (i) cease to pay the pension; and
    - (ii) recover any payment of pension or lump sum made;
  - (b) the retirement account must be closed; and
  - (c) the active member’s account must be re-established under Part 5 (pension accounts) and treated as if it had never been closed.

## **CHAPTER 3**

### **Ill-health pension**

#### **Payment thresholds**

**91.**—(1) A member of this scheme meets the lower tier threshold for payment of an ill-health pension (“lower tier threshold”) under this Chapter if the selected medical practitioner gives a report under Part 6 containing the decision that—

- (a) the member is permanently medically unfit for performing the ordinary duties of a member of the police force; but
- (b) the member is not permanently medically unfit for engaging in any regular employment.

(2) A member of this scheme meets the upper tier threshold for payment of an ill-health pension (“upper tier threshold”) under this Chapter if the selected medical practitioner gives a report under

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<sup>(6)</sup> See regulation 81(3) for when a full retirement pension comes into payment early on grounds of permanent medical unfitness.

Part 6 containing the decision that the member is permanently medically unfit for engaging in any regular employment.

### **Entitlement to payment of ill-health pension**

**92.**—(1) An active member of this scheme who has not reached normal pension age under this scheme is entitled to payment for life of an ill-health pension under this Chapter if the conditions in paragraph (2) are met.

(2) The conditions are—

- (a) the employer requires the member to retire on a date determined by the employer under Part 6;
- (b) the member has at least 2 years' qualifying service or is permanently medically unfit as the result of an injury received without the member's default in the execution of duty; and
- (c) the member is eligible under this scheme for payment of ill-health benefits.

(3) An ill-health pension under this Chapter is payable as follows—

- (a) if the member meets the lower tier threshold, a lower tier ill-health pension is payable;
- (b) if the member meets the upper tier threshold—
  - (i) a lower tier ill-health pension is payable; and
  - (ii) an enhanced upper tier ill-health pension is payable.

(4) A retirement added pension of any description is payable with a lower tier ill-health pension if the retirement account specifies an amount of retirement added pension of that description.

(5) For a transition member with continuity of service, a transition member's ill-health pension is payable under paragraph 23 of Schedule 4.

(6) For a pensioner member who becomes entitled to an enhanced upper tier ill-health pension under regulation 102 or 103, an ill-health pension is payable in accordance with that regulation.

### **Claim for payment of ill-health pension**

**93.**—(1) For the purpose of an appeal to the sheriff under regulation 197 or an appeal to a tribunal under regulation 198, an active member of this scheme is taken to claim payment of an ill-health pension under this Chapter on the date on which the member is required to retire under Part 6.

(2) An ill-health pension under this Chapter is payable to the member in respect of each month as from the date on which the member was required to retire under Part 6.

### **Annual rate of ill-health pension under this scheme**

**94.**—(1) The annual rate of ill-health pension under this scheme<sup>(7)</sup> is calculated as follows<sup>(8)</sup>.

(2) The annual rate of a lower tier ill-health pension is calculated in the same way as the annual rate of retirement earned pension<sup>(9)</sup> is calculated under regulation 88 (annual rate of full retirement pension (active members)), but without subtracting the early payment reduction.

(3) The annual rate of any retirement added pension payable with a lower tier ill-health pension is calculated in the same way as it is calculated under regulation 88 (annual rate of full retirement pension (active members)), but without subtracting the early payment reduction.

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(7) For the annual rate of a transition member's ill-health pension, see Schedule 4, Part 6.

(8) An ill-health pension is payable from the day after the date on which the employer requires the member to retire under Part 6.

(9) Regulation 36 provides for the calculation of an amount of accrued earned pension. This amount forms the basis for determining the amount of retirement earned pension under regulation 60. The annual rate of retirement earned pension in relation to active members is calculated under regulation 88.

(4) The annual rate of an enhanced upper tier ill-health pension payable to a member whose aggregate period of service is less than 5 years is the lesser of—

- (a)  $\text{total accrued earned pension} \times 3$ ; and
- (b)  $\frac{\text{final pay}}{56.1} \times \frac{\text{assumed period of pensionable service}}{2}$

where—

“total accrued earned pension” means—

- (a) for a 2006 transition member with continuity of service, the total amount of accrued earned pension under both this scheme and the 2006 scheme; or
- (b) for any other member, the amount of accrued earned pension under this scheme;

“assumed period of pensionable service” means the period (expressed in years)—

- (a) beginning with the day after the member’s period of service ceased; and
- (b) ending with the day before the day on which the member will reach normal pension age under this scheme (assuming that the member lives until that age); and

“final pay” has the meaning given in regulation 149.

(5) The annual rate of an enhanced upper tier ill-health pension payable to a member whose aggregate period of service is 5 years or more is—

$$\frac{\text{final pay}}{56.1} \times \frac{\text{assumed period of pensionable service}}{2}$$

where—

“assumed period of pensionable service” has the same meaning as in paragraph (4); and

“final pay” has the meaning given in regulation 149.

(6) In this regulation, “aggregate period of service” means—

- (a) for a 2006 transition member with continuity of service—
- (i) the member’s continuous period of pensionable service under this scheme; and
  - (ii) the member’s pensionable service under the 2006 scheme before the member’s transition date; or
- (b) for any other member, the member’s continuous period of pensionable service under this scheme.

(7) For a member whom the scheme manager determines under regulation 28 (re-determination of eligibility) is eligible under this scheme for payment of ill-health benefits, the member’s continuous period of pensionable service under this scheme is taken to begin on the date of that determination.

(8) In calculating a member’s aggregate period of service, a period of part-time service under this scheme or under the 2006 scheme counts as if it were a period of full-time service.

(9) In calculating a member’s assumed period of pensionable service (“the assumed period”), the member is taken to be in part-time service during the assumed period for the same proportion of time as the member was in part-time service during the member’s aggregate period of service.

#### **Deferment of added pension attributable to recent payments**

**95.**—(1) This regulation applies in relation to a member of this scheme—

- (a) who is entitled to payment for life of an ill-health pension under this scheme; and



- (b) whose active member's account at the end of the last day of pensionable service specifies an amount of accrued added pension that is attributable in whole or in part to a lump sum payment for added pension made under Schedule 3 within the 12 months before the relevant day.
- (2) The member becomes a deferred member of this scheme in respect of that amount of accrued added pension and accordingly—
  - (a) a deferred member's account must be established under Part 5 (pension accounts);
  - (b) that amount of accrued added pension must be specified in the deferred member's account as the provisional amount of the relevant description of deferred added pension; and
  - (c) that amount of accrued added pension is not included in the calculation of the annual rate of retirement added pension payable with the lower tier ill-health pension.
- (3) In paragraph (1), "the relevant day" means—
  - (a) the day on which the employer first referred the questions under regulation 71 (referral of medical questions for purpose of regulation 72) to the selected medical practitioner for a decision by virtue of which the member is entitled to payment of the ill-health pension; or
  - (b) if the member was on sick leave on that day and did not return to service from that leave, the day on which that leave began.

## CHAPTER 4

### Reduction of ill-health benefits

#### **Referral of medical question for purpose of reduction of benefits**

**96.**—(1) This regulation applies if the employer is considering the exercise of powers under regulation 97 (reduction of pension in case of default).

(2) The employer must refer to a selected medical practitioner for decision the question whether the person has brought about or substantially contributed to the medical unfitness by the person's own default.

(3) The decision of the selected medical practitioner on the question referred under this regulation must take the form of a report.

(4) A copy of the report must be given to the employer and to the member.

(5) That report is final, subject to—

- (a) an appeal against the decision under Schedule 1; or
- (b) the referral of the decision for reconsideration under Schedule 1.

#### **Reduction of pension in case of default**

**97.**—(1) This regulation applies in relation to—

- (a) a deferred member of this scheme who on the ground of permanent medical unfitness for engaging in any regular employment becomes entitled under regulation 81(3) to payment of a full retirement pension before reaching the member's state pension age<sup>(10)</sup>;
- (b) an active member of this scheme who becomes entitled under Chapter 3 to payment of an ill-health pension under this scheme; or
- (c) a pensioner member of this scheme who becomes entitled under Chapter 5 to payment of an enhanced upper tier ill-health pension.

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<sup>(10)</sup> See regulation 81(3) for when a full retirement pension comes into payment early on grounds of permanent medical unfitness.

(2) The employer may reduce the amount of full retirement pension or ill-health pension under this scheme by an amount not exceeding a half of that to which the member would otherwise be entitled if the selected medical practitioner gives a report on the question referred under regulation 96 (referral of medical question for purpose of reduction of benefits) containing the decision that the member has become medically unfit by the member's own default.

(3) For the purpose of this regulation, the selected medical practitioner may decide that the member has become medically unfit by the member's own default if, in the opinion of the selected medical practitioner, the member has brought about, or has substantially contributed to, the member's medical unfitness.

(4) The reduction of a pension under this regulation ceases to have effect—

- (a) in respect of a member mentioned in paragraph (1)(a) or (b), when the member reaches normal pension age under this scheme; or
- (b) in respect of a member mentioned in paragraph (1)(c), when the member reaches the member's state pension age.

(5) When the member reaches the member's state pension age, if the reduced pension is less than the amount of full retirement pension that would have been payable to the member under regulation 81(2) had the member reached the member's state pension age when the member left eligible service, the scheme manager must increase the pension to that amount.

(6) The member may appeal under regulation 197 (appeals to sheriff) or 198 (appeals to tribunal) against the decision of the employer to reduce a pension under this regulation.

### **Refusal to be medically examined**

**98.** The employer may make a decision under this Chapter on such evidence and medical advice as the employer in its discretion thinks necessary if—

- (a) the question in regulation 96 (referral of medical question for purpose of reduction of benefits) is referred to a selected medical practitioner for decision; and
- (b) the member wilfully or negligently fails to submit to any medical examination or to attend any interviews that the selected medical practitioner considers necessary in order to make a decision.

### **Decision of employer void if appeal against decision of selected medical practitioner is successful**

**99.** A decision of the employer under this Chapter is void if—

- (a) the selected medical practitioner decides that the member has brought about or substantially contributed to the medical unfitness by the member's own default;
- (b) the member appeals under Schedule 1 against the decision of the selected medical practitioner; and
- (c) the appeal board decides that the member did not bring about or substantially contribute to the medical unfitness by the member's own default.

## **CHAPTER 5**

### **Review of ill-health benefits**

#### **Review of lower tier ill-health pension**

**100.—(1)** This regulation applies in relation to a person (P) who—

- (a) is receiving payment of a lower tier ill-health pension but not an enhanced upper tier ill-health pension; and
  - (b) has not reached normal pension age under this scheme.
- (2) The employer may periodically review whether P's medical unfitness has ceased or significantly worsened.
- (3) A periodic review under paragraph (2) may be carried out at any time the employer in its discretion determines.
- (4) The employer must carry out a review as to whether P's medical unfitness has ceased or significantly worsened if the employer is notified that P's medical unfitness has worsened.
- (5) In carrying out a review under paragraph (2) or (4), the employer must refer the questions in regulation 107(2) (referral of medical questions for purpose of a review: lower tier ill-health pension) to a selected medical practitioner for decision.
- (6) In this regulation, "medical unfitness" means inability occasioned by infirmity of mind or body to perform the ordinary duties of a member of the police force.

#### **Cancellation of lower tier ill-health pension if medical unfitness ceases**

- 101.**—(1) This regulation applies if—
- (a) the employer carries out a review under regulation 100; and
  - (b) the selected medical practitioner gives a report on the questions referred under regulation 107(2) containing the decision that P has ceased to be medically unfit for performing the ordinary duties of a member of the police force.
- (2) The employer may give P notice that P may rejoin the police force—
- (a) within the period of 3 months beginning with the date on which P is given the notice; and
  - (b) at a rank not lower than the rank which P held immediately before the ill-health pension became payable.
- (3) The lower tier ill-health pension ceases to be payable to P on the earlier of—
- (a) the last day of the 3 month period; or
  - (b) the day on which P rejoins the police force.
- (4) Paragraph (5) applies if—
- (a) a lower tier ill-health pension ceases to be payable under paragraph (3)(a); but
  - (b) P is not entitled to receive payment of a full retirement pension under Chapter 2 (full retirement benefits) because P has less than 2 years qualifying service.
- (5) The employer must pay the difference to P if the aggregate of the following is less than P's aggregate pension contributions in respect of the relevant period of service—
- (a) the sums paid in respect of the pension; and
  - (b) the actuarial value, determined by the scheme manager in accordance with actuarial tables, of any pension to which P is entitled under regulation 195 (guaranteed minimum under section 14 of PSA 1993).

#### **Entitlement to enhanced upper tier ill-health pension following claim for payment**

- 102.**—(1) This regulation applies if—
- (a) the employer carries out a review under regulation 100(4) (review of lower tier ill-health pension); and

(b) the selected medical practitioner gives a report on the questions referred under regulation 107(2) containing the decision that P is permanently medically unfit for engaging in any regular employment.

(2) P is entitled to payment of an enhanced upper tier ill-health pension from the claim date, calculated in accordance with regulation 94 (annual rate of ill-health pension under this scheme) and payable in accordance with this regulation in addition to the lower tier ill-health pension.

(3) The enhanced upper tier ill-health pension is payable in respect of each month as from the claim date.

(4) P is not taken to claim payment of an enhanced upper tier ill-health pension if the claim date is more than 5 years after the date on which P became entitled to payment for life of the lower tier ill-health pension.

(5) The time limit in paragraph (4) does not apply if P's medical unfitness is attributable to a progressive medical condition which, of its nature, could have been expected, as at the time of P's retirement, to affect P with increasing severity.

(6) In this regulation—

“claim date” means the date on which the employer is notified that P's medical unfitness has worsened; and

“progressive medical condition” means—

- (a) a medical condition specified in Schedule 2 (progressive medical conditions); or
- (b) a medical condition specified on a list published by the Scottish Ministers for the purpose of this regulation.

### **Entitlement to enhanced upper tier ill-health pension following periodic review**

**103.**—(1) This regulation applies if—

- (a) the employer carries out a periodic review under regulation 100(2) (review of lower tier ill-health pension); and
- (b) the selected medical practitioner gives a report on the questions referred under regulation 107(2) containing the decision that P is permanently medically unfit for engaging in any regular employment.

(2) P is entitled to payment of an enhanced upper tier ill-health pension from the claim date, calculated in accordance with regulation 94 (annual rate of ill-health pension under this scheme) and payable in accordance with this regulation in addition to the lower tier ill-health pension.

(3) P is not entitled to payment of an enhanced upper tier ill-health pension under this regulation if the claim date is more than 5 years after the date on which P became entitled to payment for life of the lower tier ill-health pension.

(4) The time limit in paragraph (3) does not apply if P's medical unfitness is attributable to a progressive medical condition which, of its nature, could have been expected, as at the time of P's retirement, to affect P with increasing severity.

(5) The enhanced upper tier ill-health pension is payable in respect of each month as from the claim date.

(6) In this regulation, “claim date” means the date on which the employer refers the questions in regulation 107(2) (referral of medical questions for purpose of a review: lower tier ill-health pension) to a selected medical practitioner for decision.

### **Review and cancellation of enhanced upper tier ill-health pension**

**104.**—(1) This regulation applies in relation to a person (P) who—

- (a) is receiving payment of both a lower tier ill-health pension and an enhanced upper tier ill-health pension; and
  - (b) has not reached P's state pension age.
- (2) The employer may periodically review whether the person's medical unfitness has ceased or significantly improved.
- (3) A review may be carried out at intervals of no less than 5 years as the employer in its discretion determines.
- (4) The employer must refer the questions in regulation 107(3) (referral of medical questions for purpose of a review: enhanced upper tier ill-health pension) to a selected medical practitioner for decision.
- (5) If the selected medical practitioner gives a report on the questions referred under regulation 107(3) containing the decision that P has ceased to be medically unfit for engaging in any regular employment, P ceases to be entitled to payment of the enhanced upper tier ill-health pension.
- (6) P ceases to be entitled to payment of the enhanced upper tier ill-health pension—
- (a) at the end of the period of 3 months beginning with the date of the report which contains the decision by the selected medical practitioner that P has ceased to be medically unfit for engaging in any regular employment; or
  - (b) if earlier, the day on which P returns to eligible service.
- (7) P remains entitled to payment for life of the lower tier ill-health pension unless—
- (a) the employer, on a review under another regulation in this Chapter, refers the questions under regulation 107(2) (referral of medical questions for purpose of a review: lower tier ill-health pension) to the selected medical practitioner for decision; and
  - (b) the selected medical practitioner gives a report on those questions containing the decision that P has ceased to be medically unfit for performing the ordinary duties of a member of the police force.
- (8) In paragraph (2), "medical unfitness" means inability occasioned by infirmity of mind or body to engage in any regular employment.

### **Cancellation of ill-health pension: failure to receive appropriate medical treatment**

- 105.**—(1) This regulation applies if—
- (a) the employer carries out a review under regulation 100 (review of lower tier ill-health pension) or 104 (review and cancellation of enhanced upper tier ill-health pension);
  - (b) the selected medical practitioner gives P a written notice stating the opinion that—
    - (i) P's medical unfitness for performing the ordinary duties of a member of the police force would be expected to have ceased if P had received normal appropriate medical treatment; and
    - (ii) P is not receiving, or has not received, appropriate medical treatment; and
  - (c) the employer gives P a written notice stating the opinion that P's failure to receive appropriate medical treatment is attributable to P's wilfulness or negligence and giving notice of the employer's powers under paragraph (2).
- (2) The employer may cease payment of the ill-health pension if the employer decides that—
- (a) P's failure to receive appropriate medical treatment is attributable to P's wilfulness or negligence; and
  - (b) P has persisted in that failure after receiving both—
    - (i) a written notice from the selected medical practitioner under paragraph (1)(b); and

(ii) a written notice from the employer under paragraph (1)(c).

(3) In this regulation—

“appropriate medical treatment” does not include medical treatment that the employer decides is reasonable for P to refuse<sup>(11)</sup>; and

“medical unfitness” means inability occasioned by infirmity of mind or body to perform the ordinary duties of a member of the police force.

### **Review and cancellation of full retirement pension which came into payment early on grounds of permanent medical unfitness**

**106.**—(1) This regulation applies in relation to a person (P) who—

(a) is receiving payment of a full retirement pension which came into payment early on grounds of permanent medical unfitness<sup>(12)</sup>; and

(b) has not reached P’s state pension age.

(2) The employer may periodically review whether P’s medical unfitness has ceased.

(3) A review may be carried out at intervals of no less than 5 years as the employer in its discretion determines.

(4) The employer must refer the questions in regulation 107(4) (referral of medical questions for purpose of a review: full retirement pension) to a selected medical practitioner for decision.

(5) If the selected medical practitioner gives a report on the questions referred under regulation 107(4) containing the decision that the member has ceased to be medically unfit for engaging in any regular employment, the scheme manager must cease to make payments of the full retirement pension from the beginning of the next pay period.

(6) In this regulation, “medical unfitness” means inability occasioned by infirmity of mind or body to engage in any regular employment.

### **Referral of medical questions for purpose of a review**

**107.**—(1) This regulation applies in relation to the following reviews.

(2) Where the employer is considering whether the medical unfitness of a person receiving payment of a lower tier ill-health pension but not an enhanced upper tier ill-health pension has ceased or significantly worsened, the employer must refer the following questions to a selected medical practitioner for decision—

(a) whether the person continues to be medically unfit for performing the ordinary duties of a member of the police force; and

(b) if so, whether—

(i) the person is also medically unfit for engaging in any regular employment; and

(ii) that medical unfitness is likely to be permanent.

(3) Where the employer is considering whether the medical unfitness of a person receiving payment of both a lower tier ill-health pension and an enhanced upper tier ill-health pension has ceased or significantly improved, the employer must refer the following questions to a selected medical practitioner for decision—

(a) whether the person continues to be medically unfit for engaging in any regular employment; and

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<sup>(11)</sup> See provisions on appeals.

<sup>(12)</sup> See regulation 81(3) for when a full retirement pension comes into payment early on grounds of permanent medical unfitness.

(b) if not, whether the person continues to be medically unfit for the performance of the ordinary duties of a member of the police force.

(4) Where the employer is considering whether the medical unfitness of a person receiving payment of a full retirement pension which came into payment early on grounds of permanent medical unfitness has ceased, the employer must refer the question whether the person continues to be medically unfit for engaging in any regular employment to a selected medical practitioner for decision.

(5) If the selected medical practitioner decides that the question mentioned in paragraph (2)(a) or a question mentioned in paragraph (3) or (4) is answered in the affirmative, the selected medical practitioner does not need to consider the question as to the likelihood of that medical unfitness continuing permanently.

(6) The decision of the selected medical practitioner on a question referred under this regulation must take the form of a report.

(7) A copy of the report must be given to the employer and to the member.

(8) That report is final, subject to—

(a) an appeal against the decision under Schedule 1; or

(b) the referral of the decision for reconsideration under Schedule 1.

### **Refusal to be medically examined**

**108.** The employer may make a decision under this Chapter on such evidence and medical advice as the employer in its discretion thinks necessary if—

(a) a question as to the medical unfitness of a member of the police force is referred to a selected medical practitioner for decision; and

(b) the member wilfully or negligently fails to submit to any medical examination or to attend any interviews that the selected medical practitioner considers necessary in order to make a decision.

### **Decision of employer void if appeal against decision of selected medical practitioner is successful**

**109.—**(1) A decision of the employer under this Chapter is void if—

(a) the selected medical practitioner decides that—

(i) the member is permanently medically unfit for performing the ordinary duties of a member of the police force; or

(ii) the member is permanently medically unfit for engaging in any regular employment;

(b) the member appeals under Schedule 1 against the decision of the selected medical practitioner; and

(c) the appeal board decides that the member is not so permanently medically unfit.

(2) A decision of the employer under this Chapter is void if—

(a) the selected medical practitioner decides that—

(i) the member is not permanently medically unfit for performing the ordinary duties of a member of the police force; or

(ii) the member is not permanently medically unfit for engaging in any regular employment;

(b) the member appeals under Schedule 1 against the decision of the selected medical practitioner; and

- (c) the appeal board decides that the member is so permanently medically unfit.

## CHAPTER 6

### Payment options

#### **Options under this Chapter**

**110.** The options under this Chapter are—

- (a) the option under regulation 112 to buy out the early payment reduction;
- (b) the option under regulation 113 to defer payment of a retirement added pension;
- (c) the option under regulation 114 (option to commute part of pension) to exchange part of a full retirement pension or ill-health pension for a lump sum.

#### **Exercising an option under this Chapter**

**111.—**(1) A member may exercise an option under this Chapter by written notice to the scheme manager.

(2) In this Chapter, “option notice” means a notice by which a member exercises an option under this Chapter.

#### **Option to buy out early payment reduction**

**112.—**(1) This regulation applies if a member of this scheme claims payment of a full retirement pension under Chapter 2 and—

- (a) if the member is an active member, the member has not reached normal pension age under this scheme; or
- (b) if the member is a deferred member, the member has not reached the member’s state pension age.

(2) The member may opt under this regulation to buy out the early payment reduction that would otherwise apply to the calculation of the annual rate of full retirement pension.

(3) The cost must be met by way of a special payment to this scheme—

- (a) made by the member;
- (b) made by the employer of an active member or a deferred member in eligible service; or
- (c) made partly by the member and partly by the employer.

(4) Any special payment by the employer must be made with the consent of the scheme manager.

(5) The cost of buying out the early payment reduction is an amount determined by the scheme manager in accordance with actuarial guidance.

(6) Any special payment made by a member must be made in accordance with the requirements of the scheme manager.

#### **Option to defer payment of retirement added pension**

**113.—**(1) This regulation applies in relation to a member of this scheme who, on or after reaching normal pension age under this scheme, becomes entitled to payment for life of a retirement added pension of any description.

(2) The member may opt under this regulation to defer payment of the retirement added pension of that description.



(3) A member who exercises the option under this regulation becomes a deferred member of this scheme in respect of the retirement added pension of that description and accordingly—

- (a) a deferred member's account must be established under Part 5 (pension accounts); and
- (b) the amount of retirement added pension of that description must be specified in the deferred member's account as the provisional amount of deferred added pension of that description.

(4) The member is entitled to payment for life of the retirement added pension of that description when the member claims payment of that pension.

(5) A member may only claim payment of a pension under this regulation by giving at least one month's written notice to the scheme manager.

(6) The notice must specify the date from which payment of the pension is claimed.

(7) The annual rate of retirement added pension is calculated in accordance with regulation 89 (annual rate of full retirement pension (deferred members)).

### **Option to commute part of pension**

**114.**—(1) A member who becomes entitled to payment for life of a full retirement pension or an ill-health pension may opt under this regulation to exchange part of the pension for a lump sum.

(2) An option under this regulation may only be exercised before the first payment of the pension is made.

(3) If a member exercises the option, for every £1 by which the amount of the member's annual rate of full retirement pension or ill-health pension is reduced, the member must be paid a lump sum of £12.

(4) The lump sum may not be more than 25% of the amount advised by the scheme actuary as representing the cash value of the pension.

(5) A member may not exchange pension for lump sum under this regulation to the extent that it would result in a scheme chargeable payment for the purposes of Part 4 of FA 2004 (see section 241 of that Act).

(6) If paragraph (7) applies, the member may opt to exchange only so much of the pension that exceeds the guaranteed minimum, multiplied by such factor as is indicated for a person of the member's description in actuarial tables.

(7) This paragraph applies if the member has a guaranteed minimum under section 14 of PSA 1993 in relation to the whole or part of a pension as a result of receipt by this scheme of a transfer payment from another pension scheme in respect of which the member had such a guaranteed minimum.