
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 95

The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015

PART 2

Transitional provisions

CHAPTER 7

Retirement benefits

Ill health benefits : continuity of existing applications

27.—(1) This regulation applies to a member—

- (a) who, apart from the operation of this regulation—
 - (i) is prevented from contributing to or accruing further service in the 1995 Section or being an active member of the 2008 Section—
 - (aa) on or after 1st April 2015; or
 - (bb) after the member's eligibility cessation date has been reached (see regulation B3(4) to (18) of the 2011 Regulations and regulation 2.B.3(1A) to (1L) or 3.B.3(1A) to (1L) of the 2013 Regulations); and
 - (ii) becomes eligible to join the new scheme on either 1st April 2015 or the day after the member's eligibility cessation date (the member's "transition date");
- (b) who submitted an application in such form as the Scottish Ministers accepted (together with supporting medical evidence if not included in the form) for the purposes of regulation E3 of the 1995 Section or regulation 2.D.8 or 3.D.7 of the 2008 Section before the transition date;
- (c) whose application and supporting medical evidence was received by the Scottish Ministers before the transition date; and
- (d) whose ill-health pension has not become payable under the 1995 Section or the 2008 Section before the transition date.

(2) Where this regulation applies and the member is not entitled to immediate payment of ill-health pension under either the 1995 Section or the 2008 Section, the member does not become eligible to be a member of the new scheme until the day after—

- (a) the member withdraws the application for ill-health pension; or
- (b) the Scottish Ministers determine that there is no entitlement to ill-health pension under the 1995 Section or the 2008 Section (as applicable) and that determination has become final and binding.

(3) In paragraph (2), "final and binding" means—

- (a) the determination may not be the subject of further challenge by the member—

- (i) pursuant to dispute resolution arrangements made and implemented under section 50 of the Pensions Act 1995(1);
- (ii) by way of a complaint to the Pensions Ombudsman pursuant to Part X of the Pension Schemes Act 1993(2); or
- (iii) by way of an action before the courts; or
- (b) that the member has indicated in writing that—
 - (i) the application for ill-health pension is withdrawn; or
 - (ii) the determination is accepted by the member as being final and binding and any right to further challenge is waived.
- (4) Where the Scottish Ministers determine that, with the exception of the cessation condition, entitlement to ill-health pension under the 1995 Section or the 2008 Section (as applicable) has been established, the member—
 - (a) must satisfy the cessation condition before the period of one year after the transition date; or
 - (b) on expiry of that period, may be deemed by the Scottish Ministers to have withdrawn the application for ill-health pension.
- (5) Where, by virtue of paragraph (4), the member is deemed to have withdrawn the application for ill-health pension, the member becomes eligible to be a member of the new scheme on the expiry of the period mentioned in that paragraph.
- (6) In paragraph (4), “the cessation condition” is that the member—
 - (a) in relation to the 1995 Section, retires from pensionable employment; and
 - (b) in relation to the 2008 Section, ceases to be employed in NHS employment, within the meaning of the respective Section.

Ill health benefits : members below old scheme normal pension age

- 28.**—(1) This regulation applies in relation to a transition member who—
- (a) becomes entitled to an ill-health pension under the new scheme; and
 - (b) has not reached the old scheme normal pension age.
- (2) If this regulation applies—
- (a) an ill-health pension and lump sum are not payable under the old scheme;
 - (b) an ill health pension is payable under the new scheme in accordance with this regulation; and
 - (c) the member becomes a deferred member of the old scheme (but no entitlement to a pension arises under—
 - (i) regulation E12(3) of the 2011 Regulations; or
 - (ii) regulations 2.D.4, 2.D.10, 3.D.4 and 3.D.9 of the 2013 Regulations,
 by virtue of becoming a deferred member pursuant to this regulation).
- (3) If the member meets the Lower Tier conditions set out in regulation 89 (entitlement to ill-health pension) of the 2015 Regulations—
- (a) the annual rate of ill-health pension payable under the new scheme is the sum of—
 - (i) the annual rate of a Lower Tier ill-health pension payable under the new scheme; and

(1) 1995 c.26.
 (2) 1993 c.48.

- (ii) the annual rate of earned pension that would, if the member was entitled to payment of an ill-health pension under the old scheme, be payable to the member at the old scheme normal pension age; and
- (b) the member is entitled to payment of the lump sum of the amount of the lump sum (if any) that would, had the member been entitled to a payment of an ill-health pension under the old scheme, be payable to the member under—
 - (i) regulation E13 (lump sum on retirement) of the 2011 Regulations;
 - (ii) regulation 2.K.12 (amount of pension and lump sum to be paid to a 2008 Section Optant) of the 2013 Regulations; or
 - (iii) regulation 3.K.10 (amount of pension and lump sum to be paid to a 2008 Section Optant) of the 2013 Regulations.
- (4) If the member meets the Upper Tier conditions set out in regulation 89 (entitlement to ill-health pension) of the 2015 Regulations, the annual rate of ill-health pension payable under the new scheme is the sum of—
 - (a) the amounts specified at paragraph (3); and
 - (b) the annual rate of an Upper Tier addition payable under the new scheme.
- (5) If, after the ill-health pension becomes payable under this regulation, a transfer payment is made from the old scheme in respect of the member's rights under that scheme, the scheme manager must deduct from the amount of ill-health pension payable under this regulation in respect of service in the old scheme an amount which is equal to the value of the pension and lump sum represented by that transfer payment.
- (6) The amount of pension payable under this regulation which represents the amount that would have been payable under the old scheme is subject to the same conditions, and ceases to be payable in the same circumstances, as the pension to which the member would have been entitled under the old scheme in accordance with whichever of the 2011 Regulations or the 2013 Regulations are applicable.
- (7) In this regulation and regulation 29—
 - (a) a reference to the annual rate of earned pension payable under the old scheme means the annual pension payable under the following provisions—
 - (i) if the member was an active member of the 1995 Section before becoming an active member of the new scheme, regulation E1 of that Section;
 - (ii) if the member was an active member of the 2008 Section before becoming an active member of the new scheme, regulation 2.D.1 or 3.D.1 of that Section;
 - (b) a reference to an ill-health pension payable under the old scheme means a pension payable under the following provisions—
 - (i) if the member was an active member of the 1995 Section before becoming an active member of the new scheme, regulation E3 of that Section;
 - (ii) if the member was an active member of the 2008 Section before becoming an active member of the new scheme, regulation 2.D.8 or 3.D.7 of that Section;
 - (c) a reference to an ill-health pension payable under the new scheme means an ill-health pension payable under regulation 89 of the 2015 Regulations;
 - (d) a reference to the old scheme normal pension age means—
 - (i) as regards the 1995 Section, normal benefit age under the 2011 Regulations; or
 - (ii) as regards the 2008 Section, the age specified in regulation 2.D.1 or 3.D.1 (normal retirement pensions) of the 2013 Regulations.

Ill health benefits : members above old scheme normal pension age

29.—(1) This regulation applies in relation to a transition member who is receiving payment of an ill-health pension in accordance with regulation 28.

(2) When the member reaches the old scheme normal pension age—

- (a) the benefits payable under regulation 28 in respect of service in the old scheme cease to be payable under the new scheme;
- (b) the member becomes entitled to the immediate payment of the annual rate of earned pension payable under the old scheme in accordance with the Regulations of the applicable Section; and
- (c) no lump sum is payable to the member under those Regulations.

(3) In calculating the annual rate of earned pension payable under the old scheme for the purposes of paragraph (2)(b), the following are subtracted—

- (a) the amount of pension amount (if any) converted to lump sum under regulation 76 of the 2015 Regulations to the extent that it relates to the pension payable under regulation 28(3)(a)(ii); and
- (b) an amount equal to any transfer payment made to another scheme before the member reached the old scheme normal pension age.

(4) Before the amounts in paragraph (3)(a) and (b) are subtracted, they must be increased by the amount by which the annual rate of pension of that amount would have been increased under the Pensions (Increase) Act 1971(3) if—

- (a) that pension was eligible to be so increased; and
- (b) the beginning date for that pension was the date that ill-health pension became payable under the new scheme.

Age retirement of mental health officers, nurses, physiotherapists, midwives and health visitors

30.—(1) In regulation R2 of the 2011 Regulations, references to “pensionable employment” in paragraphs (1)(b) and (2) includes employment that qualified the 1995 officer transition member for benefits under the 2015 Regulations.

(2) In regulation R3 of the 2011 Regulations—

- (a) the reference to “pensionable employment” in paragraph (2) includes employment that qualified the member for benefits under the 2015 Regulations; and
- (b) references to “pensionable service” in paragraph (5)(a) include service that qualified the member for benefits under the 2015 Regulations.

Partial retirement

31.—(1) Where a transition member elects to claim a specified percentage of that member’s pension pursuant to regulation 83 of the 2015 Regulations, that election is to be treated as also being an option for the purposes of partial retirement pension pursuant to whichever of regulations 2.D.5 or 3.D.5 of the 2013 Regulations applies to the member.

(2) A transition member does not become entitled to a specified percentage of a pension under regulation 83 of the 2015 Regulations until the member has become entitled to and claimed all benefits in the 2008 Section.

(3) For the purposes of regulation 2.D.5(6) and 3.D.5(5) of the 2013 Regulations and regulation 83(5) of the 2015 Regulations—

- (a) the pension (other than additional pension) to which the member becomes entitled as a result of the option or election (before converting pension to lump sum) is not to be less than the amount of pension payable by reference to 20% of the aggregate of the member's pensionable service under the 2013 Regulations and the 2015 Regulations at the end of the option day; and
- (b) the percentage of pension (other than additional pension) for which the member does not require immediate payment is not to be less than the amount of the pension payable by reference to 20% of the aggregate of the member's pensionable service under the 2013 Regulations and the 2015 Regulations at the end of the option day.

Redundancy retirement

32.—(1) This regulation applies where an officer transition member other than one to whom regulation 33 applies—

- (a) becomes entitled to payment of a premature retirement pension pursuant to regulation 81 of the 2015 Regulations;
- (b) claims that pension; and
- (c) is under—
 - (i) age 60, in the case of a member of the 1995 Section; or
 - (ii) age 65, in the case of a member of the 2008 Section.

(2) Where this regulation applies, the member also becomes entitled to payment of a pension in respect of relevant pensionable service in the old scheme in consideration of the termination of that member's employment by reason of redundancy pursuant to—

- (a) regulation E6 of the 2011 Regulations; or
- (b) regulation 2.D.11 of the 2013 Regulations.

(3) In this regulation, “relevant pensionable service” does not include—

- (a) service from an employment that commenced when the member was eligible to be an active member of the old scheme and is a continuing employment in respect of which the member has elected to continue to accrue rights pursuant to regulation 99(5) of the 2015 Regulations;
- (b) if regulation 99(9) of the 2015 Regulations applies to the member—
 - (i) service to which Schedule 1 to the 2011 Regulations applies; or
 - (ii) service to which Part 3 of the 2013 Regulations applies.

Premature retirement : special classes

33.—(1) This regulation applies where a 1995 officer transition member to whom regulation R2 or R3 of the 2011 Regulations applies in respect of service in that Section—

- (a) becomes entitled to payment of a premature retirement pension—
 - (i) pursuant to regulation 80 of the 2015 Regulations; or
 - (ii) on grounds of redundancy pursuant to regulation 81 of the 2015 Regulations; and
- (b) claims that pension.

(2) Where this regulation applies, for the purposes of regulation E9(2) and (3) of the 2011 Regulations—

- (a) the member is to be treated as having claimed payment of a pension under regulation E1 of those Regulations; and
- (b) in the case of a member to whom regulation R2(4)(b) of the 2011 Regulations applies, the member is also entitled to a pension under regulation E11 of the 2011 Regulations if that member makes a claim for it.

Interests of efficiency of the service

34. Where an officer transition member other than one entitled to a pension pursuant to regulation R2 or R3 of the 2011 Regulations in respect of service in that Section becomes entitled to payment of a premature retirement pension pursuant to regulation 80 of the 2015 Regulations and claims that pension—

- (a) the member at the same time becomes eligible to a pension under whichever of regulation E7 of the 2011 Regulations or regulation 2.D.11 of the 2013 Regulations applies to the member in relation to the termination of that member's employment in the interests of efficiency of the service in which the member is employed; and
- (b) the member's employing authority must make a contribution to the Scottish Ministers in respect of the cost of that pension in accordance with regulation D2 of the 2011 Regulations or 2.C.6 of the 2013 Regulations.

Variations to lump sums for 1995 and 2008 pensioners joining new scheme

35.—(1) This regulation applies to persons falling in Groups 1 to 4 and 6 in the table at paragraph 1 of Schedule 1 and Groups 1 to 4 in the table at paragraph 2 of that Schedule.

(2) Where this regulation applies, a lump sum equal to five times the rate of the relevant pension is to be paid in place of the lump sum payable to active members under regulation 111(a) and paragraph 2 of Schedule 12 to the 2015 Regulations.

(3) In this regulation, the "relevant pension" means—

- (a) where the member has not taken partial retirement from the new scheme pursuant to regulation 83 of the 2015 Regulations, an amount equal to—
 - (i) if the member dies before reaching normal pension age in the new scheme, an Upper Tier IHP within the meaning of regulation 89 of the 2015 Regulations;
 - (ii) if the member dies on or after reaching normal pension age in the new scheme, a pension under regulation 72 of the 2015 Regulations;
- (b) where the member has taken partial retirement from the new scheme pursuant to regulation 83 of the 2015 Regulations, an amount determined by the scheme manager after taking advice from the scheme actuary.

Abatement

36.—(1) This regulation applies to an officer transition member who is—

- (a) a pensioner member of the new scheme to whom regulation 100(1) of the 2015 Regulations applies in respect of a pension under regulation 80 of those Regulations; and
 - (b) a pensioner member of—
 - (i) the 1995 Section to whom regulation S2 of the 2011 Regulations applies in respect of a relevant pension referred to at paragraph (2)(b)(ii) of that regulation; or
 - (ii) the 2008 Section to whom regulation 2.H.1 applies in respect of a pension referred to at paragraph (1)(c)(iii) of that regulation.
- (2) In respect of a member to whom paragraph (1)(b)(i) applies, for the purposes of—

(a) establishing whether the pensioner’s relevant income for a scheme year exceeds their previous earnings for the purposes of regulation 102 of the 2015 Regulations; and

(b) finding amount B in paragraph (8) of regulation S2 of the 2011 Regulations,

the enhancement amount for the purposes of regulation 103(2) of the 2015 Regulations is the aggregate of the amounts found under regulation 107 of the 2015 Regulations and amount B found under regulation S2(8) of the 2011 Regulations.

(3) For the purposes of paragraph (2), the amount B found under regulation S2(8) of the 2011 Regulations is the aggregate of the amount found under that paragraph and the amount found under regulation 103(2) of the 2015 Regulations.

(4) Where the pensioner’s relevant income exceeds previous pay or earnings, the amount of any reduction that is to apply to the pensions payable under each of the 2011 Regulations and 2015 Regulations is equal to the same proportion of the excess as the amount of pension for the scheme year before the reduction bears to the sum of those pensions for that year before the reduction.

(5) For the purposes of paragraph (4), the excess in the 1995 Section is equal to amount B found under regulation S2(8) of the 2011 Regulations.

(6) In respect of a member to whom paragraph (1)(b)(ii) applies, for the purposes of—

(a) establishing whether the pensioner’s relevant income for a scheme year exceeds their previous earnings for the purposes of regulation 102 of the 2015 Regulations; and

(b) establishing whether the pensioner’s relevant income for a financial year exceeds their previous pay for the purposes of regulation 2.H.3 of the 2013 Regulations,

the enhancement amount for the purposes of regulation 2.H.4(2) of the 2013 Regulations and regulation 103(2) of the 2015 Regulations is the aggregate of the amounts found under each of those regulations.

(7) Where the pensioner’s relevant income exceeds previous pay or earnings, the amount of any reduction that is to apply to the pensions payable under each of the 2013 Regulations and 2015 Regulations is equal to the same proportion of the excess as the amount of pension for the scheme year before the reduction bears to the sum of those pensions for that year before the reduction.

Abatement : special classes

37.—(1) This regulation applies to a 1995 officer transition member who is—

(a) a pensioner member of the new scheme to whom regulation 100(1) of the 2015 Regulations applies in respect of a pension under regulation 80 of those Regulations; and

(b) a pensioner member of the 1995 Section to whom regulation S2 of the 1995 Regulations applies in respect of a relevant pension referred to in paragraph (2)(c)(i) of that regulation.

(2) Where this regulation applies, the pensions mentioned in paragraph (1)(a) and (b) must be reduced by the relevant amount.

(3) The “relevant amount” in paragraph (2) is the amount determined by multiplying the relevant proportion by amount E determined under paragraph (5).

(4) The “relevant proportion” in paragraph (3) is—

(a)

in respect of the pension at paragraph (1)(a), represented by the fraction

$$\frac{A}{A+B};$$

(b)

in respect of the pension at paragraph (1)(b), represented by the fraction

$$\frac{B}{A+B},$$

where A and B have the meanings given in paragraph (5).

(5) Amount E is the amount by which the sum of amounts A, B and C exceeds amount D, where amount—

“A” is the amount of the enhancement under regulation 103(2) of the 2015 Regulations;

“B” is the amount of the member’s relevant pension from the 1995 Section (including in that amount any amount by which that pension has been reduced pursuant to an option under regulation E17 of the 2011 Regulations);

“C” is the amount of earnings received by the employed person during the year from the new employment in accordance with regulation 103(1)(a) of the 2015 Regulations; and

“D” is the amount of the member’s previous earnings construed in accordance with regulation 104 of the 2015 Regulations.