
STATUTORY INSTRUMENTS

2008 No. 654

**The National Health Service Pension
Scheme (Amendment) Regulations 2008**

Amendment of regulation L1

38.—(1) Regulation L1 (preserved pension) is amended as follows.

(2) In paragraph (2)(b)(1) after “E1”, insert “as if it were a pension under that regulation”.

(3) In paragraph (3)(b)(2) after “regular employment”, insert “of like duration”.

(4) For paragraph (4) substitute—

“(4) Except in a case to which paragraph (4A) applies—

(a) if the member is in NHS employment at the relevant time (whether with the same or another employing authority), the pension and lump sum on retirement will not become payable until the member leaves NHS employment or, if sooner—

(i) when the member attains the age of 70, if he attains that age on or before 31st March 2008; or

(ii) when the member attains the age of 75, if he attains the age of 70 on or after 1st April 2008;

(b) the relevant time—

(i) in the case of a member to whom sub-paragraph (d) of paragraph (3) applies, is when he makes the application referred to in head (iii) of that sub-paragraph; or

(ii) in any other case, when the member attains the age of 60.”.

(5) After paragraph (8) insert—

“(9) For the purposes of determining whether a member is permanently incapable of efficiently discharging the duties of the member’s employment under paragraph (3)(a), the Secretary of State shall have regard to the factors in paragraph (11) (no one of which shall be decisive) and disregard the member’s personal preferences for or against engaging in that employment.

(10) For the purposes of determining whether a member is permanently incapable of regular employment under paragraph (3)(b), the Secretary of State shall have regard to the factors in paragraph (12) (no one of which shall be decisive) and disregard the factors in paragraph (13).

(11) The factors to be taken into account for paragraph (9) are—

(a) whether the member has received appropriate medical treatment in respect of the incapacity;

(b) the member’s—

(i) mental capacity; and

(1) Paragraph (2) was amended by [S.I.2000/605](#).

(2) Paragraph (3) was amended by [S.I.2000/605](#).

- (ii) physical capacity;
 - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity, irrespective of whether such rehabilitation is undergone; and
 - (d) any other matter which the Secretary of State considers appropriate.
- (12) The factors to be taken into account for paragraph (10) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity; and
 - (b) such reasonable employment as the member would be capable of engaging in if due regard is given to the member's—
 - (i) mental capacity;
 - (ii) physical capacity;
 - (iii) previous training; and
 - (iv) previous practical, professional and vocational experience,irrespective of whether or not such employment is actually available to the member;
 - (c) such type and period of rehabilitation which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such rehabilitation is undergone) having regard to the member's—
 - (i) mental capacity, and
 - (ii) physical capacity:
 - (d) such type and period of training which it would be reasonable for the member to undergo in respect of the member's incapacity (irrespective of whether such training is undergone) having regard to the member's—
 - (i) mental capacity,
 - (ii) physical capacity,
 - (iii) previous training, and
 - (iv) previous practical, professional and vocational experience, and
 - (e) any other matter which the Secretary of State considers appropriate.
- (13) The factors to be disregarded for paragraph (10) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
 - (b) the geographical location of the member.
- (14) For the purpose of this regulation—
- “appropriate medical treatment” means such medical treatment as it would be normal to receive in respect of the incapacity, but does not include any treatment that the Secretary of State considers—
- (a) that it would be reasonable for the member to refuse,
 - (b) would provide no benefit to restoring the member's capacity for—
 - (i) efficiently discharging the duties of the member's employment under paragraph (3)(a), or
 - (ii) regular employment of like duration under paragraph (3)(b),before the member reaches normal benefit age; and

- (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches normal benefit age;
“permanently” means the period until normal benefit age; and
“regular employment of like duration” means—
 - (a) in the case of a member who was a non-GP provider, such employment as the Secretary of State considers would involve a similar level of engagement to the member’s pensionable service as a non-GP provider immediately before that service ceased; and
 - (b) in all other cases, where prior to leaving employment that was pensionable the member was employed—
 - (i) on a whole-time basis, regular employment on a whole-time basis;
 - (ii) on a part-time basis, regular employment on a part-time basis, regard being had to the number of hours, half-days and sessions the member worked in that employment.”.

Commencement Information

II Reg. 38 in force at 1.4.2008, see [reg. 1\(2\)](#)

Changes to legislation:

There are currently no known outstanding effects for the The National Health Service Pension Scheme (Amendment) Regulations 2008, Section 38.