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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 2**

**BENEFITS FOR OFFICERS**

**CHAPTER 2.K**

**2008 SECTION OPTANTS**

*Miscellaneous provisions*

**Transfers-in: transitional provision**

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

- (a) commenced a period of pensionable employment in the 1995 Section on, or after, 1st April 2008; and
- (b) within one year of the commencement of that employment 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 period of pensionable service 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).

(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 2.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 period of pensionable service that the Optant is entitled to count in respect of that 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).

(4) Subject to paragraph (5) the period of pensionable service that the Optant is entitled to count for the purposes of calculating benefits payable to, or in respect of, that Optant under this Section of the scheme—

- (a) is to be calculated in accordance with regulation 2.F.11 (calculation of transferred-in pensionable service); and
- (b) the starting day for the purposes of regulation 2.F.11(2) and (3) is the day that the Optant's pensionable employment referred to in paragraph (1) commenced.

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

- (a) regulation 2.F.12 (meaning of “capped transferred-in service”) applies to the Optant in respect of the period of pensionable service that the Optant is entitled to count under this regulation; and
- (b) the reference in regulation 2.F.12(2) to the service that the member is entitled to count under regulation 2.F.10(2)(a) (acceptance of transfer value payments) must be read as a reference to the service the Optant is entitled to count under paragraph (4).

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

**2.K.14.**—(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 (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) Subject to paragraph (5) if the Optant referred to in paragraph (1) becomes entitled to a pension under regulation 2.D.8(3) (“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 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 2.D.8(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 2.D.8 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**

**2.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 2.D.8 (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 2.D.8(3) (“an upper tier ill health pension”)—

- (a) that Optant's service must be increased by the enhancement period determined in accordance with whichever of regulation 2.K.14(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 2.D.8(6).

(3) In the case of an Optant to whom this regulation applies, references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

### **Application of regulation 2.D.9 where a 2008 Section Optant has submitted an application for ill health retirement under the 1995 Section**

**2.K.16.**—(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 2.D.8(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 2.D.9 (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 2.D.8(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 2.D.9 the Scottish Ministers determine that the Optant meets the condition in regulation 2.D.8(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 2.D.8 but 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 2.K.14(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 2.D.8(6).

(6) In the case of an Optant to whom this regulation applies—

- (a) regulation 2.K.14(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 2.D.9" after "continued in service"; and
- (b) references to the "enhancement period" in regulation 2.D.8 are to be read as references to the "transitional enhancement period" determined under this regulation.

**Application of regulation 2.D.9 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**

**2.K.17.**—(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 2.D.8 (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 subparagraph (a)—
  - (i) the Optant becomes entitled to a lower tier ill health pension under regulation 2.D.8; 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 2.D.9(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 2.D.8(3) (a) at the date of such a consideration.

(2) If, after considering the further medical evidence provided by the Optant under regulation 2.D.9, the Scottish Ministers determine that the Optant meets the condition in 2.D.8(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 2.D.8 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 2.K.14(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 2.D.8(6).

(4) In the case of an Optant to whom this regulation applies—

- (a) regulation 2.K.14(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 2.D.9” after “continued in service”; and
- (b) references to the “enhancement period” in regulation 2.D.8 are to be read as references to the “transitional enhancement period” determined under this regulation.

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

**2.K.18.**—(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 2.K.5(3) (treatment of additional service).

(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; 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 upper tier ill health pension under regulation 2.D.8 (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 2.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 2.K.5(7) 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 2.D.8, 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 2.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 2.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 calculated in accordance with regulation Q7(3) and (4) (part payment for additional service or unreduced retirement lump sum) of the 2011 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 2.K.3(3).

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

**2.K.19.**—(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 2.K.2 (options 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 NHS employment; 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 2.E**

- 2.K.20.**—(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 2.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 2.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 regulation 2.E.2 (meaning of “surviving nominated partner”).

**Textual Amendments**

**F1** Reg. 2.K.20(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), 36

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

**2.K.21.**—(1) This regulation applies if a 2008 Section Optant becomes entitled to immediate payment of a pension under regulation 2.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 2.K.3 (service and pensionable earning credited from the 1995 Section);
  - (ii) regulation 2.K.5 (treatment of additional service) (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 2.C.8 (periodical contributions), 2.C.10 (lump sum contribution) or 2.C.11 (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 2.K.12; and
- (b) before any commutation under regulation 2.D.14 (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 2.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**

**2.K.22.**—(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 2.D.8 (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 2.D.8, 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 2.K.14 to 2.K.18, 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**

**2.K.23.**—(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 2.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 2.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 2.D.8(5) (upper tier ill health pension) if the deceased Optant had not reached age 65; or
- (b) payable under regulation 2.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 2.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 2.D.8(5) (upper tier ill health pension), if the deceased Optant had not reached age 65; or
- (b) payable under regulation 2.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 2.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.**

**2.K.24.**—(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), “relevant service” for the purposes of regulation 2.E.10(3) (amount of surviving child's pension: active members and non-contributing members) means—
- (a) in the case of a deceased Optant who was, at the date of the Optant's death, an active member the greater of—
    - (i) the pensionable service the deceased Optant was entitled to count at that date, increased by the enhancement period (if any) that would have applied for the purposes of regulation 2.D.8(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 2.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 2.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 2.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 2.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, Cross Heading: Miscellaneous provisions.