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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 3**

**BENEFITS FOR PRACTITIONERS, ETC.**

**CHAPTER 3.D**

**MEMBERS' RETIREMENT BENEFITS**

*Entitlement to pensions*

**Normal retirement pensions**

**3.D.1.**—(1) Subject to paragraph (2) and the following provisions of this Part, the general rule is that a member is entitled to a pension payable for life in respect of any period of pensionable service (“the relevant service”) if the member—

- (a) has reached age 65; and
- (b) either—
  - (i) has ceased to be employed in NHS employment and has claimed payment of the pension; or
  - (ii) will reach age 75 on the next day.

(2) A member to whom paragraph (1) applies is not entitled to a pension under this regulation unless—

- (a) the member is entitled to count at least two years of qualifying service in respect of the relevant service;
- (b) a transfer value payment has been accepted by this Section of the scheme during the relevant service under Chapter 3.F (transfers), otherwise than from an occupational pension scheme; or
- (c) the member is entitled to a pension under this regulation in respect of any previous period of pensionable service.

(3) A pension to which a member is entitled under this regulation becomes payable immediately the member becomes entitled to it.

(4) The—

- (a) amount of the annual pension payable to a practitioner member under this regulation (disregarding any additional pension) is 1.87% of the member's uprated earnings; and
- (b) member's uprated earnings are to be calculated by uprating the member's pensionable earnings by the amount of the annual increase due under the provisions of the Pensions

(Increase) Act 1971(1) and section 59 (increase of official pensions) of the Social Security Pensions Act 1975(2), plus 1.5% annually.

(5) A claim referred to in paragraph (1)(b)(i) and made in accordance with regulation 3.J.2 (claims for benefits) takes effect from the date the claim is received by the Scottish Ministers.

(6) This regulation does not apply to pensions derived from pension credit rights.

(7) In this Chapter “NHS employment” includes employment with an employer in respect of whom a direction has been made under section 7 (extension of superannuation provisions of National Health Service Acts) of the Superannuation (Miscellaneous Provisions) Act 1967(3).

(8) In the case of a 2008 Section Optant this regulation is subject to regulation 3.K.10.

### **Pension credit members**

**3.D.2.**—(1) The general rule is that a pension credit member is entitled to a pension for life derived from the member’s pension credit rights if the member has reached age 65 and has claimed payment of the pension.

(2) Subject to paragraph (5), the pension becomes payable—

- (a) when the pension credit member reaches age 65; or
- (b) if it is later, when the pension sharing order under which the member is entitled to the pension credit takes effect.

(3) The pension must be of such an amount that its value is equal to the member’s pension credit, as calculated in accordance with regulations made under paragraph 5(b) (appropriate rights) of Schedule 5 to the 1999 Act.

(4) A claim under paragraph (1) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(5) A pension credit member who has not reached age 65 is entitled to immediate payment of a reduced pension payable for life if the pension credit member has—

- (a) reached age 55; and
- (b) claimed payment of the pension.

(6) The amount of the annual pension under paragraph (5)—

- (a) is first calculated as mentioned in paragraph (3); and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches age 65.

(7) A claim under paragraph (5) must be made by notice in writing in such form as the Scottish Ministers require and takes effect from the date specified in the claim as the date on which the pension is to become payable.

(1) 1971 c.56.

(2) 1970 c.60. Section 59 was amended by section 11 of, and paragraph 20 of Schedule 3 to, the Social Security Act 1979 (c.18), paragraph 33 of Schedule 5, and Schedule 6, to the Social Security Act 1985 (c.53), section 9(8) of the Social Security Act 1986 (c.50), sections 1(7) and 5 of the Pensions (Miscellaneous Provisions) Act 1990 (c.7), paragraph 34 of Schedule 2 to the Social Security (Consequential Provisions) Act 1992 (c.6) and paragraph 9(1) of Schedule 8 to the Pensions Schemes Act 1993 (c.48).

(3) 1967 c.28. Section 7 was amended by S.I. 1968/1699, section 10(5) of, and paragraph 66 of Schedule 6 and Schedule 8 to, the Superannuation Act 1972 (c.11), Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), paragraph 24 of Schedule 16 to the National Health Service (Scotland) Act 1978 (c.29) and paragraph 29 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c.43).

### **Late payment of pension with actuarial increase**

**3.D.3.**—(1) This regulation applies if a member becomes entitled to immediate payment of pension under regulation 3.D.1 (normal retirement pensions) after reaching age 65.

(2) So much of the amount of the pension to which the member would otherwise be entitled under that regulation (before any commutation under regulation 3.D.10 (general option to exchange part of pension for lump sum)) as is attributable—

- (a) to the member's pensionable service before that age; and
- (b) to any contributions paid under regulations 3.C.6 or 3.C.9 before that age,

is increased.

(3) The amount of the increase must be calculated in accordance with guidance and tables provided by the scheme actuary to the Scottish Ministers for the purposes of this regulation.

(4) 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 the period after reaching age 65 before the member becomes entitled to immediate payment of the pension and the life expectancy of the member.

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.20.

### **Early payment of pension with actuarial reduction**

**3.D.4.**—(1) A member who has not reached age 65 is entitled to immediate payment of a reduced pension payable for life if the member—

- (a) has reached age 55;
- (b) meets the condition in regulation 3.D.1(2)(a) or (b) (normal retirement pensions);
- (c) has ceased to be employed in NHS employment; and
- (d) has claimed payment of the pension.

(2) The amount of the annual pension under this regulation—

- (a) is first calculated as mentioned in regulation 3.D.1(4) (and, if additional pension is payable, in accordance with regulation 3.C.12(2) (effect of payment of additional contributions) or 3.C.14(2) (effect of part payment of periodical contributions)); and
- (b) then that amount is reduced by such amount as the Scottish Ministers determine, after consulting the scheme actuary, to be appropriate by reason of the payment of the pension before the member reaches 65.

(3) A claim under paragraph (1) must be made by notice in writing in such form as the Scottish Ministers require and takes effect—

- (a) in the case of a deferred member, from the date specified in the claim as the date on which the pension is to become payable; and
- (b) in the case of an active member or a non-contributing member, from the day immediately following the day on which the member ceased to be employed in NHS employment.

(4) A member is not entitled to a pension under this regulation if the Scottish Ministers determine, having taken advice from the scheme actuary, that the pension, as reduced under paragraph (1), would be insufficient to meet their liability to provide a guaranteed minimum pension.

(5) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.

**Partial retirement: members aged at least 55**

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

- (a) the member has reached age 55 and—
  - (i) continues to be employed in the employment in which the member is an active member or a non-contributing member; or
  - (ii) where the member has more than one such employment, in at least one of those employments;
- (b) the member would be entitled to a pension for life, by virtue of regulation 3.D.1(1)(b)(i) (normal retirement pensions), if the member had—
  - (i) reached age 65;
  - (ii) ceased to be so employed; and
  - (iii) claimed payment of the pension;
- (c) the terms on which the member engages in the employment or employments referred to in sub-paragraph (a) change; and
- (d) as a result of the change described in sub-paragraph (c), the member's engagement in such employment reduces to 90% or less of its pre-change level.

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

- (a) appropriate supporting evidence; and
- (b) a statement in writing approved by the contracting Health Board or someone appointed on its behalf that the conditions in paragraph (1)(c) and (d) are met.

(3) The option must specify—

- (a) the percentage of the member's pension (excluding any additional pension) in respect of which the member claims immediate payment ("the specified percentage"); and
- (b) whether the member claims immediate payment of additional pension (if any).

(4) A member who duly exercises the option under this regulation is entitled—

- (a) in the case of a member who has reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 3.D.1 (normal retirement pensions) if the member had ceased to be employed on the option day (disregarding any additional pension, but subject to any increase under regulation 3.D.3 (late payment of pension with actuarial increase));
- (b) in the case of a member who has not reached age 65, to immediate payment of the specified percentage of the pension to which the member would be entitled under regulation 3.D.4 (early payment of pension with actuarial reduction) if the member had ceased to be employed on the option day (disregarding any additional pension); and
- (c) if the option specifies that the member claims immediate payment of additional pension, the additional pension, subject—
  - (i) in a case within sub-paragraph (a), to an increase of the same percentage as would be made in that pension under regulation 3.D.3 if the member had ceased to be employed on the option day; and
  - (ii) in a case within sub-paragraph (b), to a reduction of the same amount as would have been made in that pension under regulation 3.D.4 if the member had so ceased.

(5) The specified percentage must be such that—

- (a) the pension to which the member becomes entitled as a result of the option (before the exercise of the option under regulation 3.D.10 (general option to exchange part of pension for lump sum) and disregarding any additional pension)—
    - (i) is not less than 20% of the pension that would have been payable if the member had ceased to be employed in all the member's employments at the end of the option day (disregarding any additional pension); and
    - (ii) taken together with any such increase to which the member becomes entitled as a result of the option (before any such commutation), is not less than 0.05% of the member's lifetime allowance on the option day;
  - (b) the percentage of the pension (other than additional pension) in respect of which the member does not require immediate payment is not less than 20% of the amount of the pension that would have been payable if the member had ceased to be employed in all the member's employments at the end of the option day (disregarding any additional pension).
- (6) The option under this regulation may only be exercised on no more than two occasions and the Scottish Ministers must take advice from the scheme actuary regarding—
- (a) any benefits to be paid after the exercise of the first option (but before the exercise of the second option);
  - (b) any benefits to be paid after the exercise of the second option; and
  - (c) the final payment.
- (7) In this regulation—
- a member's "employment" means practitioner service together with any concurrent NHS employment and "terms of employment" must be construed accordingly;
- "the option day" means the day before the reduction referred to in paragraph (1)(d) by virtue of which the option is exercisable takes effect;
- "pension" means the pension that a member would have been entitled to on the option day if the member had ceased to be employed in all of the member's employments and, in the case of practitioner services, the pensionable earnings taken into account when working out the pension will be drawn from the latest certificate referred to in regulation 3.J.14, or the latest scheme year's final pensionable earnings referred to in regulation 3.C.2 (members' contribution rate), and agreed with each relevant Health Board or someone appointed to act on its behalf or employer; and
- "pre-change level" means the level of the member's engagement in the employment referred to in paragraph (1)(a) during the period of 12 months ending with the option day.
- (8) For the purposes of this Part, a member who has exercised the option under this regulation—
- (a) is a pensioner member as respects the specified percentage of the pension to which the member is immediately entitled as a result of exercising the option and the percentage of the pensionable service that represents as respects which the member is an active member on the option day;
  - (b) if the member continues in pensionable service after the option day, is an active member or a non-contributing member as respects—
    - (i) the pensionable service after that day in which the member continues; and
    - (ii) so much of the pensionable service as respects which the member is an active member or a non-contributing member on the option day as does not fall within subparagraph (a) ("the unspecified service"); and
  - (c) if the member does not continue in pensionable service after the option day, is a deferred member as respects the unspecified service.

- (9) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.

**Increase in level of engagement following exercise of option under regulation 3.D.5**

**3.D.6.**—(1) This regulation applies if, in a case where a member has exercised the option under regulation 3.D.5 (partial retirement: members aged at least 55)—

- (a) during the period of 12 months beginning with the day after the option day, the terms on which the member holds the employment or employments referred to in regulation 3.D.5(1)(a) change again; and
- (b) either—
  - (i) as a result, the level of the member’s engagement in that employment or those employments is increased to more than 90% of the member’s pre-change level; or
  - (ii) following an increase referred to in head (i), the member’s engagement in that employment or those employments is reduced to less than 90% of the member’s engagement during the period of 12 months ending with the option day.

- (2) In the circumstances referred to in—

- (a) paragraph (1)(b)(i), the amount of the member’s pension mentioned in regulation 3.D.5(4) (a) and (b) must be abated to zero from the first pension day immediately following the day on which the level of the member’s engagement increased; and
- (b) paragraph (1)(b)(ii), subject to any adjustments in accordance with paragraph (3), the member is again entitled to receive payment of the full amount of the pension mentioned in sub-paragraphs (a) and (b) of that regulation as from the first pension day immediately following the day on which the level of the member’s engagement reduced.

(3) Where paragraph (2)(b) applies, before restoring the payment of a pension the Scottish Ministers must have regard to the advice of the scheme actuary as to whether the amount of the pension should be adjusted in view of the length of time during which it was abated to zero in accordance with paragraph (2)(a).

(4) For the purposes of this regulation, if during the period of 12 months beginning with the day after the option day the member enters a further employment or employments in which the member is an active member or a non-contributing member of this Section of the scheme—

- (a) that event is to be treated as if the terms on which the member holds the employment or employments in respect of which the option was exercised (“the option employment”) had changed again; and
- (b) the member’s level of engagement in the further employment or employments is to be treated as an increase in the level of the member’s engagement in the option employment or employments.

(5) In this regulation, a member’s “employment”, “the option day” and “pre-change level” have the same meanings as in regulation 3.D.5(7) (partial retirement: members aged at least 55).

- (6) Where—

- (a) a member’s pension is abated in accordance with paragraph (2)(a) in the circumstances described in paragraph (1)(b); and
- (b) the member’s level of engagement does not reduce in the manner described in paragraph (1)(c),

the pension is (in any event) payable by the Scottish Ministers when the member retires, or partially retires again, from pensionable employment or attains age 75 and in doing so the Scottish Ministers must—

- (i) have regard to any pensions already paid, including any lump sum paid as a result of the member exercising an option under regulation 3.D.10 (general option to exchange part of pension for lump sum); and
- (ii) take the advice of the scheme actuary.

**Early retirement on ill health: active members and non-contributing members**

**3.D.7.**—(1) A pension payable under this regulation (an “ill health pension”) may be paid at two different tiers to be known as a lower tier ill health pension and an upper tier ill health pension.

(2) An active member or a non-contributing member who has not reached age 65 and who has ceased to be employed in NHS employment is entitled to immediate payment of a lower tier ill health pension that is payable for life if—

- (a) in the opinion of the Scottish Ministers the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member’s employment efficiently;
- (b) the member’s employment is terminated because of that physical or mental infirmity;
- (c) the member has at least two years of qualifying service; and
- (d) the member has claimed the pension.

(3) An active member who has not reached age 65 is entitled to immediate payment of an upper tier ill health pension if—

- (a) in addition to meeting the condition in paragraph (2)(a), in the opinion of the Scottish Ministers the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration;
- (b) the member’s employment is terminated because of that physical or mental infirmity;
- (c) the member has at least two years of qualifying service; and
- (d) the member has claimed the pension.

(4) The annual amount of a lower tier ill health pension (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4) (normal retirement pensions).

(5) The annual amount of an upper tier ill health pension (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4), but on the assumption that the member’s pensionable service—

- (a) is increased by the enhancement period where the member has returned to pensionable employment 12 months or more after having a break in such service and it would be more favourable to the member to treat the member’s pensionable service before and after the break, and all such other breaks (if any), as continuous; and
- (b) is not increased by the enhancement period in the circumstances referred to in subparagraph (a) if—
  - (i) the member’s pensionable service before and after the break is treated separately under regulation 3.G.2 (general rule: separate treatment of service etc.); or
  - (ii) the member’s pensionable service in respect of an earlier service credit is treated separately under regulation 3.K.7.

(6) Subject to paragraph (7), in this regulation “the enhancement period” means two-thirds of the member’s assumed pensionable service.

(7) If the member’s pensionable service includes both officer service and practitioner service—

- (a) the member's pensionable service must be increased by the enhancement period and the enhancement factor must be the proportion by which the member's pensionable service is increased by that period;
  - (b) the length of the member's officer service (under Part 2) and the member's practitioner service are each to be increased by the enhancement factor; and
  - (c) the annual amount of an upper tier ill health pension (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4) (normal retirement pensions), but on the assumption that the member's uprated earnings are increased by the enhancement factor.
- (8) Subject to paragraph (9), in this regulation "the member's assumed service" means the further pensionable service that the member could have counted if the member had continued in service until reaching age 65.
- (9) To the extent that any increase under paragraph (8) would cause a member's pensionable service to exceed the limit of 45 years provided for in regulation 3.A.3(3) (meaning of "pensionable service"), the amount of any excess is to be reduced accordingly.
- (10) This regulation is subject to—
- (a) regulation 3.G.4 (effect of re-employment on upper tier ill health pensions); and
  - (b) regulation 3.G.5 (re-employed lower tier ill health pensioners).
- (11) A member does not qualify for a pension under this regulation if the member's NHS employment has been terminated by the member—
- (a) being dismissed from such employment (unless the Scottish Ministers are satisfied that the member was dismissed because of the member's infirmity);
  - (b) retiring or resigning from such employment at a time when the member was the subject of disciplinary proceedings or had been notified that such proceedings were being contemplated; or
  - (c) otherwise retiring or resigning from such employment unless at the time of doing so the member's employing authority notified the Scottish Ministers in writing that the member's physical or mental infirmity is the reason for the termination of that employment and the Scottish Ministers are satisfied that is the case.
- (12) For the purposes of determining whether a member is permanently incapable of discharging the duties of the member's employment efficiently under paragraph (2)(a), the Scottish Ministers must have regard to the factors in paragraph (14) (no one of which is decisive) and disregard the member's personal preference for or against engaging in that employment.
- (13) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (3)(a), the Scottish Ministers must have regard to the factors in paragraph (15) (no one of which is decisive) and disregard the factors in paragraph (16).
- (14) The factors to be taken into account for paragraph (12) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (b) the member's—
    - (i) mental capacity; and
    - (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 Scottish Ministers consider appropriate.



- (15) The factors to be taken into account for paragraph (13) are—
- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
  - (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 due 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 due 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 Scottish Ministers consider appropriate.
- (16) The factors to be disregarded for paragraph (13) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (17) In 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 Scottish Ministers consider—
- (a) would be reasonable for the member to refuse;
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a); or
    - (ii) engaging in regular employment of like duration under paragraph (3)(a), before the member reaches age 65; or
  - (c) that, through no fault on the part of the member, it is not possible for the member to receive before the member reaches age 65;
- “permanently” means—
- (a) the period until age 65; and
  - (b) in the case of a 2008 Section Optant who, before joining this Section, was assessed by a medical adviser as being—

- (i) permanently incapable of efficiently discharging the Optant's duties for the purposes of regulation E3(2)(b)(i) (early retirement pension on ill health grounds (post 1st April 2008)) of the 2011 Regulations, that Optant must be deemed to be permanently incapable of discharging the duties of the Optant's employment efficiently for the purposes of paragraph (2)(a); or
- (ii) permanently incapable of regular employment of like duration for the purposes of regulation E3(2)(b)(ii) of the 2011 Regulations, that Optant must be deemed to be permanently incapable of engaging in regular employment of like duration for the purposes of paragraph (3)(a); and

“regular employment of like duration” means such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's current pensionable service as a practitioner.

(18) In the case of a 2008 Section Optant, this regulation is subject to regulations 3.K.10, 3.K.12 to 3.K.15 and 3.K.16.

(19) In the case of a Waiting Period Joiner, this regulation is subject to regulation 3.L.3.

### **Re-assessment of entitlement to an ill health pension determined under regulation 3.D.7**

**3.D.8.**—(1) This regulation applies if—

- (a) in the opinion of the Scottish Ministers a member meets the condition in regulation 3.D.7(2)(a) (early retirement on ill health: active members and non-contributing members); and
- (b) at the time the member is awarded a pension under that regulation the Scottish Ministers give the member notice in writing that the member's case may be considered once within a period of three years commencing with the date of that award to determine whether the member meets the condition in regulation 3.D.7(3)(a) at the date of such a consideration.

(2) A member to whom a notice under paragraph (1)(b) has been given may apply to the Scottish Ministers for a review of whether the member subsequently meets the condition in regulation 3.D.7(3)(a) if—

- (a) the member makes the application in writing—
  - (i) within three years of the date of issue of the notice; or
  - (ii) in the case of a member who engages in further NHS employment during the period of three years referred to in paragraph (1)(b), before the first anniversary of the day on which that employment commences or, if sooner, before the end of that period;
- (b) the application for a review is accompanied by further written medical evidence—
  - (i) relating to whether the condition in regulation 3.D.7(3)(a) is satisfied at the date of the Scottish Ministers' review; and
  - (ii) that evidence relates to the same physical or mental impairment as a result of which the member met the condition in regulation 3.D.7(2)(a);
  - (iii) no previous application for a review has been made under this paragraph; and
  - (iv) the member has not become entitled to an upper tier ill health pension in respect of any later service under regulation 3.G.5 (re-employed lower tier ill health pensioners).

(3) If, after considering the further medical evidence provided by the member, the Scottish Ministers determine that the member meets the condition in regulation 3.D.7(3)(a), then as from the date on which that determination is made the member—

- (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 3.D.7, which is to be calculated as if paragraph (8) of that regulation included the words “from the date of the Scottish Ministers’ determination under regulation 3.D.8” after “continued in service”.
- (4) In the case of a 2008 Section Optant, this regulation is subject to regulations 3.K.14 and 3.K.15.

### **Early retirement on ill health: deferred members**

**3.D.9.**—(1) A deferred member who has not reached age 65 is entitled to immediate payment of a pension that is payable for life if—

- (a) in the opinion of the Scottish Ministers the member suffers from physical or mental infirmity as a result of which the member is permanently incapable of engaging in regular employment of like duration; and
- (b) the member has left that employment and claimed the pension.

(2) A deferred member who is in NHS employment and has not reached age 65 is entitled to immediate payment of a pension that is payable for life if—

- (a) in the opinion of the Scottish Ministers the member—
  - (i) does not fall within paragraph (1)(a); and
  - (ii) suffers from physical or mental infirmity as a result of which the member is permanently incapable of discharging the duties of the member’s employment efficiently; and
- (b) the member has claimed the pension.

(3) The amount of the annual pension payable under this regulation (disregarding any additional pension) is calculated as specified in regulation 3.D.1(4) (normal retirement pensions).

(4) For the purposes of determining whether a member is permanently incapable of discharging the duties of the member’s employment efficiently under paragraph (2)(a)(ii), the Scottish Ministers must have regard to the factors in paragraph (6) (no one of which is decisive) and disregard the member’s personal preference for or against engaging in that employment.

(5) For the purposes of determining whether a member is permanently incapable of engaging in regular employment of like duration under paragraph (1)(a), the Scottish Ministers must have regard to the factors in paragraph (7) (no one of which is decisive) and disregard the factors in paragraph (8).

(6) The factors to be taken into account for paragraph (4) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (b) the member’s—
  - (i) mental capacity; and
  - (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 Scottish Ministers consider appropriate.

(7) The factors to be taken into account for paragraph (5) are—

- (a) whether the member has received appropriate medical treatment in respect of the incapacity;
- (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 due 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 due 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 Scottish Ministers consider appropriate.
- (8) The factors to be disregarded for paragraph (5) are—
- (a) the member's personal preference for or against engaging in any particular employment; and
  - (b) the geographical location of the member.
- (9) In 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 Scottish Ministers consider—
- (a) would be reasonable for the member to refuse;
  - (b) would provide no benefit to restoring the member's capacity for—
    - (i) discharging the duties of the member's employment efficiently under paragraph (2)(a)(ii); or
    - (ii) engaging in regular employment of like duration under paragraph (1)(a), before the member reaches age 65; or
  - (c) would, through no fault on the part of the member, not be possible for the member to receive before the member reaches age 65;
- “permanently” means the period until age 65; and
- “regular employment of like duration” means such employment as the Scottish Ministers consider would involve a similar level of engagement to the member's pensionable service as a practitioner immediately before that service ceased.
- (10) In the case of a 2008 Section Optant, this regulation is subject to regulation 3.K.10.