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STATUTORY INSTRUMENTS

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**2008 No. 653**

The National Health Service Pension Scheme Regulations 2008

PART 3

BENEFITS FOR PRACTITIONERS ETC.

CHAPTER 3.D

MEMBERS' RETIREMENT BENEFITS

*Allocation*

**3.D.14 Election to allocate pension**

(1) A member may elect to allocate a part of the annual amount of the member's pension under the Scheme for the provision of a pension after the member's death for a single person who is the member's spouse or civil partner or another person who is the member's dependant within the meaning of paragraph 15 of Schedule 28 to the 2004 Act if conditions A and B are met.

(2) Condition A is that the member has not become entitled to the payment of any pension under the Scheme other than a pension payable under regulation 3.D.5 (partial retirement: members aged at least 55).

(3) Condition B is that in the case of a member who is not making the election on claiming the pension, the member—

- (a) has reached the age of 65 and has completed 45 years of pensionable service, or
- (b) the member has reached the age of 70.

(4) Any pension provided as a result of such an election must be calculated in accordance with tables prepared by the Scheme actuary.

(5) The member may not elect to allocate more than one-third of the member's relevant annual pension.

(6) The member may not elect to allocate an amount that would result in—

- (a) the allocated annual pension exceeding the member's unallocated relevant annual pension,
- (b) the allocated pension exceeding such amount as the Secretary of State may determine for the purposes of this paragraph, after consultation with the Scheme actuary, having regard to any restrictions imposed under Part 4 of the 2004 Act, or
- (c) the value of the allocated annual pension being such that a lump sum could be paid under regulation 3.J.5 (commutation of small pensions) by way of commutation of a pension of that amount if the person entitled to the pension was not entitled to any other benefits under the Scheme.

(7) The annual pension that is allocated must be an exact number of pounds.

(8) If a member—

- (a) elects to allocate a part of the member's pension under paragraph (1) after reaching the age of 65 and whilst in pensionable service, and
- (b) dies before the pension becomes payable,

for the purposes of paragraphs (5) to (7) the member is treated as entitled to the relevant pension to which the member would have been entitled if the member had become entitled to the pension immediately before death.

(9) References in this regulation to the member's relevant pension, in relation to any pension, are references to so much of the pension as would be payable if the member had exercised the option under regulation 3.D.10 (general option to exchange part of pension for lump sum) so as to obtain the maximum lump sum possible.

### **3.D.15 Procedure for election under regulation 3.D.14**

- (1) An election under regulation 3.D.14 in respect of a member's pension must be made—
  - (a) at the time when the member claims the pension or, if the member does not become entitled to the pension at that time, when the member does become so entitled, or
  - (b) if the member is in pensionable service after reaching the age of 65, at any time after reaching that age and before reaching the age of 75.
- (2) The election must be made by giving notice in writing to the Secretary of State.
- (3) The notice must be in such form and contain such information as the Secretary of State requires.
- (4) Subject to paragraphs (6) and (7), an election under regulation 3.D.14 takes effect once it has been accepted by the Secretary of State.
- (5) The election may not be withdrawn, amended or revoked after it has taken effect.
- (6) The election does not take effect if—
  - (a) the member or the person in whose favour the election was made ("the beneficiary") dies on or before the day on which the Secretary of State accepts it, or
  - (b) the Secretary of State is not satisfied that at the time when the election is made the member is in good health.
- (7) The election is treated as not having taken effect if the beneficiary dies before the member is notified in writing that the Secretary of State has accepted the election.

### **3.D.16 Effect of allocation**

- (1) If an election under regulation 3.D.14 for the allocation of a member's pension to another person ("the beneficiary") has taken effect—
  - (a) the member's pension is reduced accordingly (even if the beneficiary predeceases the member), and
  - (b) if the beneficiary survives the member, on the member's death the beneficiary becomes entitled to the payment of a pension for life of such amount as is determined in accordance with regulation 3.D.14.
- (2) An allocation is disregarded for the purposes of this regulation if it would result in a pension being paid under this regulation to a beneficiary who is neither—
  - (a) the member's spouse or civil partner on the date when the member becomes entitled to the pension or dies, nor
  - (b) a dependant of the member for the purposes of paragraph 15(2) or (3) of Schedule 28 to the 2004 Act when the member dies.

(3) References in this Part to pensions under this Chapter do not include pensions under this regulation except where the context otherwise requires.

(4) Any such pension is payable in addition to any pension payable to the beneficiary in respect of the member's death under Chapter 3.E of this Part.