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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 109**

The National Health Service Superannuation Scheme  
etc. (Miscellaneous Amendments) (Scotland) Regulations 2013

PART 3

AMENDMENT OF THE NATIONAL HEALTH SERVICE  
PENSION SCHEME (SCOTLAND) REGULATIONS 2008

**Amendments to the National Health Service Pension Scheme (Scotland) Regulations 2008**

**26.** The National Health Service Pension Scheme (Scotland) Regulations 2008(1) are amended in accordance with this Part.

**Amendment of regulation 1.B.1**

**27.** Omit regulation 1.B.1(4), (5) and (6) (actuarial reports and accounts), and in the heading to that regulation, for “Actuarial report and accounts” substitute “Accounts”.

**Revocation of regulation 1.B.2**

**28.** Omit regulation 1.B.2 (cost sharing).

**Amendment of regulation 2.A.1**

**29.** In regulation 2.A.1(1) (interpretation: general)—

(a) after the definition of “the 2006 (Wales) Act” insert—

““the 2008 Act” means the Pensions Act 2008(2);”;

(b) after the definition of “the 2008 Section Optant” insert—

““the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(3);”;

(c) after the definition of “additional services” insert—

““automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;

“automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14 (jobholders excluded from automatic re-enrolment) of those Regulations(4));”;

(d) for the definition of “pay period” substitute—

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(1) S.S.I. 2008/224 amended by S.S.I. 2009/19 and 208, 2010/22 and 369, 2011/53 and 364 and 2012/69 and 163 and S.I. 2010/234.

(2) 2008 c.30.

(3) S.I. 2010/772.

(4) Regulation 14 was substituted by regulations 17 and 22 of S.I. 2012/215.

““pay period” means, in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract.”.

#### **Amendment of regulation 2.A.6**

- 30.** In regulation 2.A.6(6) (qualifying service: disregard of breaks in service)—
- (a) for “Paragraphs (2), (4) and (5) do not apply if” substitute “Where”;
  - (b) in sub-paragraph (a), after “the earlier period” insert “, paragraphs (4) and (5) do not apply”; and
  - (c) in sub-paragraph (b), after “made” insert “, paragraphs (2), (4) and (5) do not apply”.

#### **Amendment of regulation 2.B.4**

- 31.** In regulation 2.B.4 (joining this Section of the scheme)—
- (a) for paragraph (1) substitute—
    - “(1) Subject to paragraph (3), a person in NHS employment who is eligible to be an active member of this Section of the scheme, becomes such a member, unless absent from work for any reason, on either—
    - (a) the commencement of the person’s employment; or
    - (b) where the person has previously opted out of this Section of the scheme under regulation 2.B.5(1) and is a person to whom section 3 or section 5 of the 2008 Act applies, on that person’s—
      - (i) automatic enrolment date, or
      - (ii) automatic re-enrolment date, except where the notice referred to in regulation 2.B.5(1) was given within the period of 12 months immediately preceding that date.”;
  - (b) for paragraph (3) substitute—
    - “(3) A person who has previously exercised an option to opt out of this Section of the scheme in accordance with regulation 2.B.5(1) in respect of an employment in which that person was an active member, and who remains eligible to be an active member in respect of that employment, may opt to join or re-join this Section of the scheme by giving notice in writing to the employing authority in such form as the Scottish Ministers require.”; and
  - (c) omit paragraph (6).

#### **Amendment of regulation 2.B.5**

- 32.** In regulation 2.B.5 (opting out of this Section of the scheme)—
- (a) in paragraph (1), after “scheme in any” insert “NHS”; and
  - (b) for paragraphs (4) to (6) substitute—
    - “(4) A person to whom paragraph (1)(a) of regulation 2.B.4 applies in respect of an employment who gives notice in writing under paragraph (1) of this regulation within one month of the date of commencing that NHS employment, is to be treated as not having become an active member by virtue of that regulation.
    - (5) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person’s—

- (a) automatic enrolment date; or
- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.

(6) This regulation does not apply to a person to whom section 3, 5 or 8 of the 2008 Act<sup>(5)</sup> and regulation 9 or 15 of the 2010 Regulations<sup>(6)</sup> apply (that is, a person who is subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.”.

#### **Amendment of regulation 2.C.2**

**33.** For regulation 2.C.2(4) (contribution rate for members other than non-GP providers) substitute—

“(4) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

#### **Amendment of regulation 2.C.4**

**34.** For regulation 2.C.4(4) (contribution rate and determination of pensionable earnings for non-GP providers) substitute—

“(4) Before determining those pensionable pay bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

#### **Amendment of regulation 2.C.6**

**35.** After regulation 2.C.6(4) (contributions by employing authorities: members becoming entitled to pensions under regulation 2.D.11)<sup>(7)</sup> insert—

“(4A) Paragraph (4)(b) does not apply where the member leaves the employment in which the member was an active member on or after 1st April 2013.”.

#### **Amendment of regulation 2.C.13**

**36.** In regulation 2.C.13 (cancellation of options under regulation 2.C.8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation 2.C.8, the Scottish Ministers have reasonable grounds to believe that the member’s health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

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(5) Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

(6) Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.

(7) Paragraph (4) was re-numbered by regulation 21 of S.S.I. 2010/22.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

#### **Amendment of regulation 2.C.15**

**37.** In regulation 2.C.15(4) (effect of death or early payment of pension after option exercised under regulation 2.C.8, 2.C.10 or 2.C.11), at the beginning, insert “Subject to regulation 2.C.13(5) and (6),”.

#### **Amendment of regulation 2.D.11**

**38.** For regulation 2.D.11(1)(c) (early retirement on termination of employment by employing authority) substitute—

- “(c) the member’s employing authority certifies that the member—
- (i) has at least two years’ continuous employment determined in accordance with any terms and conditions applying to the employment;
  - (ii) is entitled to claim a pension under this regulation if the member’s employment is terminated by reason of redundancy as an alternative to receiving the lump sum payment (in whole or in part) otherwise payable to the member in accordance with those terms and conditions; and
  - (iii) has not unreasonably refused to seek suitable alternative employment or accept an offer of such employment;”.

#### **Amendment of regulation 2.E.11**

**39.** For regulation 2.E.11(6) (amount of children’s pension under regulation 2.E.8: deceased pensioner members) substitute—

- “(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the greater of—
- (a) the rate of the member’s pension at the date of death disregarding any reduction made under Chapter 2.H (abatment) and any additional pension; and
  - (b) the amount of children’s pension that would otherwise be payable under these Regulations.”.

#### **Amendment of regulation 2.H.1**

**40.** Omit regulation 2.H.1(5) (application of Chapter 2.H).

#### **Amendment of regulation 2.H.3**

**41.** In regulation 2.H.3 (reduction of pension)—

- (a) in paragraphs (1) and (2), for “scheme year” substitute “financial year”; and
- (b) for paragraphs (6) and (7) substitute—

“(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member’s previous pay will be reduced proportionately.”.

#### **Amendment of regulation 2.H.4**

42. In regulation 2.H.4 (meaning of “relevant income”) for “scheme year”, in both places it occurs, substitute “financial year”.

#### **Amendment of regulation 2.H.5**

43. In regulation 2.H.5 (meaning of “previous pay”: general) for “scheme year”, in each of the three places it occurs, substitute “financial year”.

#### **Amendment of regulation 2.H.6**

44. In regulation 2.H.6 (meaning of “previous pay”: members with concurrent employments) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

#### **Amendment of regulation 2.H.8**

45. In regulation 2.H.8 (employed pensioners with more than one pension) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

#### **Amendment of regulation 2.H.9**

46. In regulation 2.H.9 (provisional reductions and later adjustments) for “scheme year”, in each of the eight places it occurs, substitute “financial year”.

#### **New regulation 2.J.2A**

47. After regulation 2.J.2 (claims for benefits) insert—

##### **“Provision of information: continuing entitlement to benefit**

**2.J.2A.**—(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part, of any benefit payable to that person.”.

#### **Amendment of 2.J.11**

48. In regulation 2.J.11 (general prohibition on unauthorised payments), for “rules” substitute “Regulations”.

#### **Amendment of regulation 3.A.1**

49. In regulation 3.A.1 (interpretation of Part 3: general)—

- (a) after the definition of “the 2004 Act” insert—

““the 2008 Act” means the Pensions Act 2008(8);”;

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(8) 2008 c.30.

- (b) after the definition of “2008 Section Optant” insert—
  - ““the 2010 Regulations” means the Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010(9);”;
- (c) for the definition of “appropriate proportion” substitute—
  - ““appropriate proportion” means 70/187;”;
- (d) after the definition of “appropriate proportion” insert—
  - ““automatic enrolment date” means the date referred to in section 3(7) (automatic enrolment) of the 2008 Act;
  - “automatic re-enrolment date” means the date determined in accordance with regulation 12 (opting out) of the 2010 Regulations (as modified by regulation 14 (jobholders excluded from automatic re-enrolment) of those Regulations(10));”;
- (e) for the definition of “pay period” substitute—
  - ““pay period” means, in relation to members who receive either salary, wages or other regular payments under a contract of employment or a contract for services, the period in respect of which each payment is made in accordance with the terms of that contract;”.

#### **Amendment of regulation 3.A.6**

- 50.** In regulation 3.A.6 (qualifying service: disregard of breaks in service)—
  - (a) in paragraph (6)—
    - (i) for “Paragraphs (2), (4) and (5) do not apply if” substitute “Where”;
    - (ii) in sub-paragraph (a), after “the earlier period” insert “, paragraphs (4) and (5) do not apply”; and
    - (iii) in sub-paragraph (b), after “made” insert “, paragraphs (2), (4) and (5) do not apply”; and
  - (b) in paragraph (7), for “(6)(b)” substitute “(6)(a)”.

#### **Amendment of regulation 3.A.8**

- 51.** In regulation 3.A.8 (pensionable earnings: breaks in service), after paragraph (10) insert—
  - “(11) Before a calculation of a member’s pensionable earnings can be made in accordance with paragraph (3), written notice of the length of the period of absence to which this regulation applies must be given to the Scottish Ministers by—
    - (a) the member, where the member is a principal practitioner or a non GP provider; or
    - (b) in all other cases, the relevant Health Board or someone appointed to act on their behalf.
  - (12) The notice referred to in paragraph (11) must be provided to the Scottish Ministers in such form and manner as the Scottish Ministers may stipulate from time to time.”.

#### **Amendment of regulation 3.B.4**

- 52.** In regulation 3.B.4 (joining this Section of the scheme)—
  - (a) for paragraph (1) substitute—

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(9) [S.I. 2010/772](#).

(10) Regulation 14 was substituted by regulations 17 and 22 of [S.I. 2012/215](#).

“(1) Subject to paragraph (3), a person in NHS employment who is eligible to be an active member of this Section of the scheme becomes such a member, unless absent from work for any reason, on either—

- (a) the commencement of the person’s employment; or
- (b) in circumstances where the person has previously opted out of this Section of the scheme under regulation 3.B.5(1), on that person’s—
  - (i) automatic enrolment date; or
  - (ii) automatic re-enrolment date, except where the notice referred to in regulation 3.B.5(1) was given within the period of 12 months immediately preceding that date.”;

(b) for paragraph (3) substitute—

“(3) A person who previously exercised an option to opt out of this Section of the scheme in accordance with regulation 3.B.5(1) in respect of an employment in which that person was an active member, and who remains eligible to be such a member in respect of that employment, may opt to join or rejoin this Section of the scheme by giving notice in writing to the employing authority in such form as the Scottish Ministers require.”; and

(c) omit paragraph (6).

### **Amendment of regulation 3.B.5**

**53.** In regulation 3.B.5 (opting out of this Section of the scheme)—

- (a) in paragraph (1), after “scheme in any” insert “NHS”;
- (b) for paragraph (2) substitute—

“(2) A person who opts out under paragraph (1) ceases to be an active member of this Section of the scheme on the date the notice takes effect and, if applicable, any contributions made by or on behalf of the person for a period of membership after the date on which the notice was effective must be refunded.”;

(c) for paragraphs (4) and (5) substitute—

“(4) A person to whom paragraph (1)(a) of regulation 3.B.4 applies in respect of an employment who gives notice in writing under paragraph (1) of this regulation within one month of the date of commencing that NHS employment, is to be treated as not having become an active member by virtue of that regulation.

(5) A notice under paragraph (1) ceases to have effect on the day immediately preceding, as the case may be, the person’s—

- (a) automatic enrolment date; or
- (b) automatic re-enrolment date: this does not apply where the notice was given within the period of 12 months immediately preceding that date.”;

(d) omit paragraph (6);

(e) in paragraph (7), after “Part 2” insert “or as a locum practitioner”;

(f) after paragraph (7), insert—

“(8) This regulation does not apply to a person to whom section 3, 5 or 8 of the 2008 Act(11) and regulation 9 or 15 of the 2010 Regulations(12) apply (that is, a person who is

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(11) Section 3 makes provision for the automatic enrolment of a qualifying worker into a qualifying scheme like the NHS Superannuation Scheme for Scotland. Section 5 makes provision for the automatic re-enrolment of such a person into such a scheme who has previously opted out of it. Section 8 makes provision for the opting out of such a scheme, including the effect of such an opt out.

subject to automatic enrolment or automatic re-enrolment in this Section of the scheme as a qualifying scheme who does not wish to participate in it): this paragraph does not affect the rights of such a person who subsequently becomes a member of this Section of the scheme in circumstances where those provisions of the 2008 Act and 2010 Regulations do not apply.”.

#### **Amendment of regulation 3.C.2**

**54.** For regulation 3.C.2(4) (members’ contribution rate) substitute—

“(4) Before determining those pensionable earnings bands or contribution percentage rates, the Scottish Ministers must consider the advice of the scheme actuary.”.

#### **Amendment of regulation 3.C.11**

**55.** In regulation 3.C.11 (cancellation of options under regulation 3.C.8)—

- (a) in paragraph (4), after “such an option” insert “in accordance with paragraph (3)”; and
- (b) after paragraph (4) insert—

“(5) If, after the exercise of the option under regulation 3.C.8, the Scottish Ministers have reasonable grounds to believe that the member’s health will prevent the member from paying contributions for the whole contribution period, the Scottish Ministers may cancel the option by giving the member notice in writing.

(6) If the Scottish Ministers cancel such an option in accordance with paragraph (5), the additional periodical contributions cease to be payable for the first pay period beginning after the date specified in the notice and all subsequent pay periods and any periodical payments made before the date of cancellation must be returned to the member.”.

#### **Amendment of regulation 3.C.13**

**56.** In regulation 3.C.13(4) (effect of death or early payment of pension after option exercised under regulation 3.C.6, 3.C.8 or 3.C.9), at the beginning, insert “Subject to regulation 3.C.11(5) and (6),”.

#### **Amendment of regulation 3.E.11**

**57.** For regulation 3.E.11(6) (amount of children’s pension under regulation 3.E.8: deceased pensioner members) substitute—

“(6) In a case within paragraph (4)(b) or (c), the rate of the pension in respect of the dependent child or children for the period of 6 months beginning with the deceased’s death is equal to the greater of—

- (a) the rate of the member’s pension at the date of death disregarding any reduction made under Chapter 2.H (abatment) and any additional pension; and
- (b) the amount of children’s pension that would otherwise be payable under these Regulations.”.

#### **Amendment of regulation 3.H.1**

**58.** Omit regulation 3.H.1(6) (application of Chapter 3.H).

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(12) Regulation 9 sets out the requirements for a valid opt out notice and the time period during which a person who has been automatically enrolled into a qualifying scheme may opt out of it. Regulation 15 applies the provisions of regulation 9 to a person who has been automatically re-enrolled into a qualifying scheme having previously opted out of it. Note that regulation 11 deals with the refund of contributions following an opt out.



### **Amendment of regulation 3.H.3**

**59.** In regulation 3.H.3 (reduction of pension)—

- (a) in paragraphs (1) and (2), for “scheme year” substitute “financial year”; and
- (b) for paragraphs (6) and (7) substitute—

“(6) For the purpose of calculating the reduction to be made under paragraph (1) in respect of any part of a financial year, the amount of the member’s previous pay will be reduced proportionately.”.

### **Amendment of regulation 3.H.4**

**60.** In regulation 3.H.4 (meaning of “relevant income”) for “scheme year”, in both places it occurs, substitute “financial year”.

### **Amendment of regulation 3.H.5**

**61.** In regulation 3.H.5 (meaning of “previous earnings”: general) for “scheme year”, in each of the three places it occurs, substitute “financial year”.

### **Amendment of regulation 3.H.6**

**62.** In regulation 3.H.6 (employed pensioners with more than one pension) for “scheme year”, in each of the four places it occurs, substitute “financial year”.

### **Amendment of regulation 3.H.7**

**63.** In regulation 3.H.7 (provisional reductions and later adjustments), for “scheme year”, in each of the eight places it occurs, substitute “financial year”.

### **New regulation 3.J.2A**

**64.** After regulation 3.J.2 (claims for benefits) insert—

#### **“Provision of information: continuing entitlement to benefit**

**3.J.2A.—**(1) The Scottish Ministers may specify a date by which a person who is in receipt of a benefit under this Section of the scheme is to provide the Scottish Ministers with all or any of the following material—

- (a) evidence of the person’s identity;
- (b) the person’s contact details; and
- (c) evidence of the person’s continuing entitlement to the benefit.

(2) Where a person fails to provide the material referred to in paragraph (1) in accordance with that paragraph the Scottish Ministers may withhold all, or any part, of any benefit payable to that person.”.

### **Amendment of 3.J.11**

**65.** In regulation 3.J.11 (general prohibition on unauthorised payments), for “rules” substitute “Regulations”.