

---

SCOTTISH STATUTORY INSTRUMENTS

---

**2009 No. 19**

**The National Health Service (Superannuation Scheme, Pension Scheme and Injury Benefits) (Scotland) Amendment Regulations 2009**

**PART 1**

**Amendment of the National Health Service Superannuation Scheme (Scotland) Regulations 1995**

**Amendment of regulation B2**

4.—(1) Regulation B2 (age limits and restrictions on membership) is amended as follows.

(2) In paragraph (1)(g), for head (iii) substitute—

“(iii) has been a member of the 2008 scheme;”.

(3) After paragraph (1)(g) insert—

“(h) that person—

(i) ceased to be in pensionable employment on or before 31st March 2008;

(ii) on so ceasing was entitled to a preserved pension in accordance with regulation E6;

(iii) returns to NHS employment on or after 1st October 2008 and before returning exercises the right to transfer out all of that person’s benefits in the scheme in accordance with regulation M1;

(iv) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of employment referred to in head (i) and ending on the day immediately before the employment referred to in head (iii) commences; and

(v) is not in receipt of a pension under regulation E2 or E2A;

(i) that person—

(i) is entitled to a preserved pension in accordance with regulation E6;

(ii) returns to NHS employment on or after 1st October 2008;

(iii) has had a break in pensionable employment for any one period of five years or more beginning with the day immediately following the cessation of the pensionable employment in respect of which he is entitled to the pension referred to in paragraph (i) and ending on the day immediately before the employment referred to in paragraph (ii) commences; and

(iv) is not in receipt of a pension under regulations E2 or E2A.”.

(4) For paragraph (2) substitute—

“(2) In paragraph (1)—

- (a) “pensionable employment” includes employment that qualified the member for a benefit under a health service scheme; and
  - (b) a reference to regulations E6, E9, M1 and M2 includes the equivalent of those regulations in a health service scheme the provisions of which correspond to the provisions of the National Health Service Superannuation Scheme for Scotland as set out in these Regulations.”.
- (5) For paragraph (3), substitute–
- “(3) The Scottish Ministers may permit a person who would otherwise not be permitted to join the scheme in accordance with paragraph (1)(e), (f), (g) and (i) to do so if–
- (a) that person’s NHS employment was transferred to another employer by virtue of–
    - (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings; and
    - (ii) at no time since that transfer (or the last of them if more than one) has the person had a break in pensionable employment for any one period of five years or more; and
  - (b) that person’s employment is transferred to an employing authority by virtue of–
    - (i) a transfer of undertakings or arrangements equivalent to a transfer of undertakings, (whether or not the transferring employer is in the public sector provided that the person’s employment was originally transferred out of the public sector); and
    - (ii) the employment from which the member is transferred–
      - (aa) qualified the member for benefits under an occupational pension scheme; and
      - (bb) the rules of that scheme (in the opinion of the Scottish Ministers) entitle the member to receive benefits on retirement upon, or prior to, attaining the age of 60 years.”.