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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 117**

**The National Health Service Superannuation  
Scheme (Scotland) Regulations 2011**

**PART B**

**MEMBERSHIP OF THE SCHEME**

**Membership of this Section of the scheme**

**B1.**—(1) Subject to regulation B2 (age limits and restrictions on membership) the following persons are eligible to be included in this Section of the scheme:—

- (a) officers; and
- (b) medical and dental practitioners, assistant and associate practitioners and GP registrars.

[<sup>F1</sup>(2) Subject to paragraph (3), each eligible person will be included in this Section of the scheme—

- (a) automatically on commencing NHS employment;
- (b) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and has given notice in accordance with regulation B5(1), on the date determined under paragraph (2) of that regulation;
- (c) subject to regulation B5(3), where the person has previously opted out of this Section of the scheme and is a person to whom section 3 or section 5 of the 2008 Act applies—
  - (i) on that person's automatic enrolment date; or
  - (ii) on that person's automatic re-enrolment date, except where the notice referred to in regulation B4(1) was given within the period of 12 months immediately preceding that date.]

(3) A person who, on the coming into force of this regulation, is already in NHS employment but is not included in the scheme shall not be included automatically, but may elect to be included in the scheme, if eligible in terms of paragraph (1), by giving notice in writing to the [<sup>F2</sup>Scottish Ministers] at any time, subject to paragraph (4). The person shall be included in the scheme on the first day of the pay period immediately after the notice is received or such later date (which must be the first day of a pay period) as is specified in the notice.

(4) A person may not elect to be included in the scheme in terms of paragraph (3) during a period of absence from work for any reason.

(5) A person who is included in the scheme may opt out at any time in accordance with regulation B4.

### Textual Amendments

- F1** Reg. B1(2) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), 4 (with reg. 71)
- F2** Words in reg. B1(3) substituted (1.4.2011) by [The National Health Service Superannuation Scheme \(Scotland\) Amendment Regulations 2011 \(S.S.I. 2011/173\)](#), regs. 1(2), **2(b)**

### Age limits and restrictions on membership

- B2.**—(1) A person is not eligible to join this Section of the scheme if—
- (a) that person is—
    - (i) under the age of 16;
    - (ii) over the age of 75; or
    - (iii) over the age of 70 on or before 31st March 2008;
  - (b) that person is a special class officer over the age of 65;
  - (c) that person is an officer in “contributory service” under the Teachers' Superannuation (Scotland) Regulations 2005 <sup>M1</sup> in any hospital vested in the Scottish Ministers;
  - (d) that person holds an honorary appointment and does not at the same time hold any other employment which entitles that person to join this Section of the scheme;
  - (e) that person enters NHS employment for the first time on or after 1st April 2008 and has not previously been a member of this Section of the scheme or a health service scheme corresponding to this Section;
  - (f) that person, on or after 1st April 2008, returns to or commences NHS employment and was entitled to a refund of contributions under regulation E15 (early leavers' entitlement to refund of contributions) when that person last left pensionable employment, unless paragraph (4), but not paragraph (5), of regulation L1 (treatment of pensionable service of early leavers returning to pensionable employment) applies to that person;
  - (g) that person—
    - (i) leaves pensionable employment on, or after, 1st April 2008; and
    - (ii) before returning to or commencing NHS employment, exercises that person's right to transfer out all of that person's benefits in this Section of the scheme in accordance with regulation M1 (member's right to a transfer or a buy-out) or M2 (exercising a right to a transfer or a buy-out); or
    - (iii) has been a member of the 2008 Section.
  - (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 E12;
    - (iii) returns to, or commences for the first time, NHS employment on or after 1st October 2008 and before that employment starts (whether it is employment that has been returned to or commenced for the first time) exercises the member's right to transfer out all of that person's benefits 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

- <sup>F3</sup>(v) . . . . .
- (i) that person—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) returns to or commences 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 that person 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
- <sup>F4</sup>(iv) . . . . .
- (j) that person's pension under a health service scheme is payable and in the opinion of the Scottish Ministers that person would not be eligible to—
- (i) join this Section of the scheme, or
  - (ii) where appropriate, accrue further pensionable service under this Section of the scheme,
- if the pensionable employment to which that health service scheme applied, and in respect of which that pension is being paid, had been pensionable employment in this Section of the Scheme;
- (k) that person is a person who—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) has given notice in accordance with [<sup>F5</sup>paragraph (1)] of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
  - (iii) as a result of that notice has been treated as having left pensionable employment; and
  - (iv) pursuant to that notice remains opted out of this Section of the scheme for any one period of five years or more beginning on the date that notice takes effect;
- (l) that person is a person who—
- (i) is entitled to a preserved pension in accordance with regulation E12;
  - (ii) has given notice in accordance with paragraph (1) <sup>F6</sup>... of regulation B4 that the person does not wish to, or no longer wishes to, participate in this Section of the Scheme;
  - (iii) following that notice, has had a break in pensionable employment for any one period of five years or more, comprising the aggregate of—
    - (aa) any period during which the person leaves NHS employment, and
    - (bb) any period during which the person is treated as never having been included in this Section of the scheme in accordance with paragraph [<sup>F7</sup>(7)] of regulation B4 in respect of one or more later periods of NHS employment entered into after having given the notice referred to in (ii);
- (m) that person is a person who—
- (i) enters NHS employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to participate in the Scheme in accordance with paragraph (1) <sup>F8</sup>... of regulation B4; and

- (iii) as a result of that notice on 1st April 2008 is treated as never having been in pensionable employment with any employing authority in accordance with paragraph (6) of regulation B4;
- (n) that person is a person who—
  - (i) enters NHS employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) <sup>F9</sup>... of regulation B4;
  - (iii) as a result of that notice has been treated as having left pensionable employment with all employing authorities for a period of 12 months or more; and
  - (iv) is not entitled to a preserved pension in accordance with regulation E12; or
- (o) that person is a person who—
  - (i) enters pensionable employment before 1st April 2008;
  - (ii) has given notice in respect of that employment (and all other such employments with an employing authority) that that person does not wish to, or no longer wishes to, participate in the Scheme in accordance with paragraph (1) <sup>F10</sup>... of regulation B4;
  - (iii) is not entitled to a preserved pension in accordance with regulation E12; and
  - (iv) has, in respect of that pensionable employment, either received a repayment of contributions [<sup>F11</sup>under regulation E15] or exercised the right to a transfer payment under Part M.
- (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 E2, E3, E12, E15, L1, 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;
- <sup>F12</sup>(c) for the purposes of sub-paragraphs (i) and (1)(iii)(aa), any break in pensionable employment where the member was in pensionable public service as defined in paragraph 3(2) of Schedule 7 to the 2013 Act is to be disregarded.]
- (3) The Scottish Ministers may permit a person who would otherwise not be permitted to join this Section of 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.
- (4) The reference in paragraph (3)(a) to arrangements equivalent to a transfer of undertakings is to arrangements—
- (a) which the Scottish Ministers consider to be equivalent to the transfer of an undertaking; and
  - (b) under which the parties to the arrangements have agreed that the rights of the persons whose employments are being transferred should as far as practicable be treated in the same way as they would have been under a transfer of an undertaking.
- (5) For the purposes of paragraph (3)(b)(ii) a person is not to be treated as being entitled under the rules of a pension scheme to receive benefits upon, or prior to, attaining the age of 60 years, where such entitlement arises by virtue of any scheme rule making special provision—
- (a) as to early retirement on the grounds of ill health, redundancy or otherwise; or
  - (b) for benefits to be reduced for early payment.
- (6) Before permitting a person referred to in paragraph (3) to join this Section of the scheme the Scottish Ministers must take advice from the scheme actuary.

#### Textual Amendments

- F3** Reg. B2(1)(h)(v) omitted (1.4.2015) by virtue of [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), [sch. 2 para. 2\(a\)](#)
- F4** Reg. B2(1)(i)(iv) omitted (1.4.2015) by virtue of [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), [sch. 2 para. 2\(a\)](#)
- F5** Words in reg. B2(1)(k)(ii) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(a\)](#) (with reg. 71)
- F6** Words in reg. B2(1)(l)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F7** Word in reg. B2(1)(l)(iii)(bb) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(c\)](#) (with reg. 71)
- F8** Words in reg. B2(1)(m)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F9** Words in reg. B2(1)(n)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F10** Words in reg. B2(1)(o)(ii) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), [5\(b\)](#) (with reg. 71)
- F11** Words in reg. B2(1)(o)(iv) inserted (with effect in accordance with reg. 1(7) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/364\)](#), regs. 1(2), [3](#)
- F12** Reg. B2(2)(c) inserted (1.4.2015) by [The National Health Service Pension Scheme \(Transitional and Consequential Provisions\) \(Scotland\) Regulations 2015 \(S.S.I. 2015/95\)](#), reg. 1(b), [sch. 2 para. 2\(b\)](#)

### Marginal Citations

**M1** S.S.I. 2005/393, to which there are amendments not relevant to these Regulations.

### Restrictions on further participation in this Section of the scheme

**B3.**—<sup>F13</sup>(A1) A person may not contribute to or accrue further pensionable service under this Section of the scheme in relation to the person's service after 31st March 2022.

(A2) Paragraphs (1) to (18) of this regulation apply to a person's service under this Section of the scheme before 1st April 2022.]

<sup>F14</sup>(A3) Nothing in paragraphs (4) to (18) of this regulation prevents a member's remediable service within the meaning of section 1 of the Public Service Pensions and Judicial Offices Act 2022 being treated as pensionable service under this scheme in accordance with section 2 of that Act (Remediable service treated as pensionable under Chapter 1 legacy schemes).]

(1) Members who—

- (a) cease to satisfy the conditions for eligibility for membership specified in regulation B1(1); or
- (b) opt out of this Section of the scheme in accordance with regulation B4,

may not continue to contribute to or accrue further pensionable service under this Section of the scheme.

(2) Persons whose pensions under this Section of the scheme are payable may not contribute to or accrue further pensionable service under this Section of the scheme, except in the cases referred to in—

- (a) regulation E2(12) (early retirement pension (ill health));
- (b) regulation E3(11) (ill health pension on early retirement) but subject to paragraph (3); or
- (c) regulation R4(4) (members doing more than one job).

(3) Persons to whom—

- (a) regulation E4(3)(a) (re-assessment of ill health condition determined under regulation E3) applies may not (except where sub-paragraph (b) applies) contribute to or accrue further pensionable service under this Section of the scheme from the date the Scottish Ministers make a determination under that regulation;
- (b) sub-paragraph (a) applies may contribute to or accrue further pensionable service under this Section of the scheme from the day after the first anniversary of that person's NHS employment following the date of the Scottish Ministers' determination under regulation E3 if that person is under the age of 50 on that day.

<sup>F15</sup>(4) A person who on 1st April 2012 has not attained the age of 41 years and 7 months may not contribute to or accrue further pensionable service under this Section of the scheme in respect of service in NHS employment on, or after, 1st April 2015.

(5) A person who on 1st April 2012 has attained the age of 50 may not contribute to or accrue further pensionable service under this Section of the scheme unless that person either—

- (a) is in pensionable employment on 31st March 2015; or
- (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.

(6) A person who on 1st April 2012 has attained the age of 45 but not the age of 46 years and 7 months may not contribute to or accrue further pensionable service under this Section of the scheme unless either paragraph (7) or (8) applies to that person and that person—

- (a) is in pensionable employment on 31st March 2015; or
  - (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.
- (7) This paragraph applies to a person who was on 1st April 2012 in pensionable employment as a special class officer—
- (a) under regulation R2; or
  - (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.
- (8) This paragraph applies to a person who was on 31st March 2015 in pensionable employment as a special class officer—
- (a) under regulation R2; or
  - (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.
- (9) A person who on 1st April 2012 has attained the age of 46 years and 7 months but has not attained the age of 50, may not contribute to or accrue further pensionable service under this Section of the scheme unless one of paragraph (10), (11) or (12) applies to that person and that person—
- (a) is in pensionable employment on 31st March 2015; or
  - (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.
- (10) This paragraph applies to a person whose eligibility cessation date calculated in accordance with paragraph (15) has not been reached.
- (11) This paragraph applies to a person if on the day before that person's eligibility cessation date calculated in accordance with paragraph (10), that person is in pensionable employment as a special class officer—
- (a) under regulation R2; or
  - (b) under regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation.
- (12) A person who on 1st April 2012 has attained the age of 41 years and 7 months but has not attained the age of 45, may not contribute to or accrue further pensionable service under this Section of the scheme unless either paragraph (13) or (14) applies to that person and that person—
- (a) is in pensionable employment on 31st March 2015; or
  - (b) returns to pensionable employment on or after 1st April 2015 in circumstances where the provisions of regulation B2 do not apply.
- (13) This paragraph applies to a person if that person was on 1st April 2012 in pensionable employment as a special class officer—
- (a) under—
    - (i) regulation R2; or
    - (ii) regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation; and

(b) that person’s eligibility cessation date calculated in accordance with paragraph (16) has not been reached.

(14) This paragraph applies to a person if that person was on 31st March 2015 in pensionable employment as a special class officer—

(a) under—

(i) regulation R2; or

(ii) regulation R3 and would, if that employment were to continue until that person attained the age of 60 years, be able to count 20 years or more pensionable service as a mental health officer for the purposes of paragraphs (5) and (6) of that regulation; and

(b) that person’s eligibility cessation date calculated in accordance with paragraph (16) has not been reached.

(15) For the purposes of paragraphs (10) and (11), the “eligibility cessation date” in relation to a person is to be determined according to the formula—

$$A - 2 \times M$$

where—

A is 1st April 2022;

M is the number of months (rounded up to the nearest whole month) by which the person’s age on 1st April 2012 is less than 50.

(16) For the purposes of paragraphs (13) and (14), the “eligibility cessation date” in relation to a person is to be determined according to the formula—

$$A - (2 \times N)$$

where—

A is 1st April 2022;

N is the number of months (rounded up to the nearest whole month) by which the person’s age on 1st April 2012 is less than 45.

(17) Paragraph (18) applies to a person where in the opinion of the Scottish Ministers—

(a) that person was previously an active member of a health service scheme corresponding to this Section of the scheme;

(b) the regulations governing that corresponding scheme include provisions pursuant to subsection (5) of section 18 of the 2013 Act that provide for exceptions to subsection (1) of that section, and

(c) pursuant to those provisions, the member would have been eligible to re-join that corresponding scheme if the member had returned to NHS employment for the purposes of that scheme on the day the member commenced NHS employment within the meaning of these Regulations.

(18) The Scottish Ministers may permit a person referred to in paragraph (17) to join this Section of the scheme and, for the purposes of paragraphs (5) to (16), the member’s previous pensionable employment under the corresponding health service scheme referred to in paragraph (17) will be treated as if it were previous pensionable employment under this Section of the scheme.]

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**Textual Amendments**

**F13** Reg. B3(A1)(A2) inserted (1.4.2022) by [The National Health Service Pension Schemes \(Scotland\) Amendment Regulations 2022 \(S.S.I. 2022/100\)](#), regs. 1(2), 2



- F14** Reg. B3(A3) inserted (1.10.2023) by The National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023 (S.S.I. 2023/246), reg. 1(2), **sch. para. 1**
- F15** Reg. B3(4)-(18) added (1.4.2015) by The National Health Service Pension Scheme (Transitional and Consequential Provisions) (Scotland) Regulations 2015 (S.S.I. 2015/95), reg. 1(b), **sch. 2 para. 3**

**Opting out of this Section of the scheme**

**B4.**—(1) A person who does not wish to, or who no longer wishes to, participate in this Section of the scheme may opt out of this Section of the scheme at any time by giving notice in writing to the employing authority.

<sup>F16</sup>(2) .....

<sup>F16</sup>(3) .....

<sup>F16</sup>(4) .....

[<sup>F17</sup>(5) A notice referred to in paragraph (1) takes effect—

- (a) from the first day of the pay period immediately following its receipt by the employing authority; or
- (b) where a later date is specified in the notice, from the first day of the pay period following the pay period in which the specified date falls.]

(6) Subject to paragraphs (7) [<sup>F18</sup>to] (8), a member who opts out of this Section of the scheme will be treated as having left pensionable employment on the day the notice takes effect.

[<sup>F19</sup>(7) This paragraph applies if the person opts out of this Section of the scheme in relation to NHS pensionable employment—

- (a) before the end of 3 months after that person’s first day of that pensionable employment (or within any longer period the scheme manager considers appropriate); or
- (b) before the end of 3 months after that person’s automatic re-enrolment date (or within any longer period the scheme manager considers appropriate).

(7A) Where paragraph (7)(a) applies, the person is taken never to have been in pensionable service in this Section of the scheme.

(7B) Where sub-paragraph (b) of paragraph (7) applies, the person is taken never to have been in pensionable service in this Section of the scheme during the period referred to in that sub-paragraph.]

[<sup>F20</sup>(8) 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.]

(9) A person is not to be treated as having retired from pensionable employment by reason only of having opted out of this Section of the scheme.

[<sup>F21</sup>(10) This regulation and regulation B5 do not apply to a person to whom section 3, 5 or 8 of the 2008 Act and regulation 9 or 15 of the 2010 Regulations 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.]

### Textual Amendments

- F16** Reg. B4(2)-(4) omitted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by virtue of [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(a)** (with reg. 71)
- F17** Reg. B4(5) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(b)** (with reg. 71)
- F18** Word in reg. B4(6) substituted (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), reg. 1(1), **4(a)** (with reg. 53)
- F19** Reg. B4(7)-(7B) substituted for reg. B4(7) (13.3.2017) by [The National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2017 \(S.S.I. 2017/27\)](#), reg. 1(1), **4(b)** (with reg. 53)
- F20** Reg. B4(8) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(d)** (with reg. 71)
- F21** Reg. B4(10) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **6(e)** (with reg. 71)

### [<sup>F22</sup>Joining or rejoining this Section of the scheme after opting out]

**B5.**—(1) Subject to [<sup>F23</sup>paragraph (3), a person] who has opted out of this Section of the scheme in accordance with regulation B4(1) may, if in NHS employment, [<sup>F24</sup>join or] rejoin this Section of the scheme by giving notice in writing to the employing authority.

(2) The [<sup>F25</sup>person] referred to in paragraph (1) is to be included in this Section of the scheme on the first day of the pay period immediately after the notice referred to in paragraph (1) is received or such later date (which must be the first day of a pay period) as is specified in the notice.

[<sup>F26</sup>(3) A person who has opted out may not rejoin this Section of the scheme during any period of absence from work for any reason.]

### Textual Amendments

- F22** Reg. B5 heading substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(d)** (with reg. 71)
- F23** Words in reg. B5(1) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(a)(i)** (with reg. 71)
- F24** Words in reg. B5(1) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(a)(ii)** (with reg. 71)
- F25** Word in reg. B5(2) substituted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(b)** (with reg. 71)
- F26** Reg. B5(3) substituted for reg. B5(3)(4) (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\)](#), regs. 1(2), **7(e)** (with reg. 71)

### Opting into this Section of the scheme: mis-sold pensions

**B6.**—(1) Subject to paragraph (3), this regulation applies to a person who, during any period—

- (a) was eligible to be an active member of this Section of the scheme;
- (b) opted out of this Section of the scheme under regulation B4(1) and made contributions to a personal pension scheme; and
- (c) has suffered loss as the result of a contravention which is actionable under section 62 of the Financial Services Act 1986<sup>M2</sup> or section 150 of the Financial Services and Markets Act 2000<sup>M3</sup>.

(2) Where, at any time, a person to whom this regulation applies elects to [<sup>F27</sup>join or] rejoin this Section of the scheme under regulation B5, there must be, if the Scottish Ministers so determine, counted as pensionable service in respect of that person a period equal to the aggregate of—

- (a) that person's additional period of pensionable service as approved by the Scottish Ministers for the purposes of regulation N5(2)(a); and
- (b) that person's transferred out service, if any, within the meaning of regulation N5(5)

provided there has been paid to the Scottish Ministers in respect of that person a transfer payment calculated in accordance with regulation N5.

(3) Where, at any time, a person to whom this regulation applies elects to [<sup>F28</sup>join or] rejoin this Section of the scheme under regulation B5 but dies in pensionable employment or becomes entitled to benefits under Part E of these Regulations before the transfer payment referred to in paragraph (2) has been paid to the Scottish Ministers in respect of that person, paragraph (2) continues to apply in the case of that person.

(4) In this regulation—

“active member” means a person who is in pensionable service under the scheme; and

“personal pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993 and includes—

- (a) a retirement annuity contract approved under Chapter III of Part XIV of the Taxes Act;
- (b) a personal pension scheme approved under Chapter IV of Part XIV of the Taxes Act;
- (c) a retirement benefits scheme approved under section 591(2)(g) of the Taxes Act;
- (d) a scheme referred to in (a), (b) or (c) that obtained relevant approval under the Taxes Act before 6th April 2006 and on that date became a registered scheme for the purpose of the 2004 Act; and
- (e) a scheme established on, or after, 6th April 2006, as a registered scheme for the purposes of the 2004 Act and which the Scottish Ministers agree to recognise as a transferring scheme for the purposes of Parts M and N of these Regulations.

#### Textual Amendments

**F27** Words in reg. B6(2) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\), regs. 1\(2\), 8\(a\)](#) (with reg. 71)

**F28** Words in reg. B6(3) inserted (with effect in accordance with reg. 1(6) of the amending S.S.I.) by [The National Health Service Superannuation Scheme etc. \(Miscellaneous Amendments\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/109\), regs. 1\(2\), 8\(b\)](#) (with reg. 71)

#### Marginal Citations

**M2** 1986 c.60.

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**Changes to legislation:** There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, PART B. (See end of Document for details)

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**M3** 2000 c.8.

**Changes to legislation:**

There are currently no known outstanding effects for the The National Health Service Superannuation Scheme (Scotland) Regulations 2011, PART B.