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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.

(2) Each eligible person shall be included in the scheme automatically upon commencing NHS employment unless that person has made an election under regulation B4 (opting out of the scheme) to opt out of the scheme.

(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 Secretary of State 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.

**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(1) in any hospital vested in the Scottish Ministers;

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(1) [S.S.I. 2005/393](#), to which there are amendments not relevant to these Regulations.

- (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
  - (v) is not in receipt of a pension under regulation E2 or E3;
- (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
  - (iv) is not in receipt of a pension under regulations E2 or E3.
- (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 paragraphs (1) or (2) 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) or (2) 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 (6) 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) or (2) 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) or (2) 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) or (2) 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 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.
- (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.

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

#### **B3.—(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.

### **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.

(2) Where, following an application under regulation A3(4) an OOH provider is approved as an employing authority, an employee of such a provider who does not wish to, or who no longer wishes to, participate in this Section of the scheme—

- (a) may opt out of it from any day falling within the period specified in paragraph (3) by giving notice in writing to that provider; and
- (b) will be treated as having left pensionable employment on the date on which that notice takes effect.

(3) For the purposes of paragraph (2), that period—

- (a) starts on the date on which NHS employment is treated as commencing under regulation A3(7); and
- (b) ends on the date on which the notice is received by the OOH provider.

(4) A notice referred to in paragraph (2) must be given no later than one month from the end of the pay period in which the date on which approval of an application under regulation A3 falls.

(5) A notice—

- (a) referred to in paragraph (1) will take effect—
  - (i) from the first day of the pay period immediately following its receipt by the employing authority; or
  - (ii) 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;
- (b) referred to in paragraph (2) will take effect—
  - (i) from the first day of the pay period immediately following receipt by the OOH provider; or

(ii) where a date not earlier than the date on which the NHS employment is treated as commencing under regulation A3(7) is specified in the notice, from that date.

(6) Subject to paragraphs (7) and (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.

(7) A person—

(a) who opts out of this Section of the scheme under paragraph (1) before the end of the pay period during which the employing authority included that person in this Section of the scheme; or

(b) whose opt out under paragraph (2) takes effect in respect of that period,

is to be treated as never having been included in this Section of the scheme.

(8) A notice under this regulation will apply to any subsequent employment with the same employing authority irrespective of the length of the break in service unless and until a further notice is given under paragraph (1) or paragraph (2) of regulation B5.

(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.

### **Rejoining this Section of the scheme**

**B5.**—(1) Subject to paragraphs (3) and (4), a member who has opted out of this Section of the scheme in accordance with regulation B4(1) may, if in NHS employment, rejoin this Section of the scheme by giving notice in writing to the employing authority.

(2) The member 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.

(3) A person who has previously opted out of this Section of the scheme in accordance with regulation B4(2) may, if eligible to do so, join or rejoin this Section of the scheme by giving notice in writing to the OOH provider and on doing so shall be included in this Section of the scheme on—

(a) the first day of the first pay period after the notice to join or rejoin this Section of the scheme is received; or

(b) such other date being—

(i) the first day of a pay period; and

(ii) no earlier than the first day of the pay period immediately following the pay period in which the notice to opt out of this Section of the scheme referred to in regulation B4(2) (or the latest of them) took effect in accordance with regulation B4(5),

as is specified in that notice.

(4) A member who has opted out of this Section of the scheme may not rejoin this Section of the scheme during a period of absence from work for any reason.

### **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>(2)</sup> or section 150 of the Financial Services and Markets Act 2000<sup>(3)</sup>.

(2) Where, at any time, a person to whom this regulation applies elects to 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 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.

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<sup>(2)</sup> 1986 c.60.

<sup>(3)</sup> 2000 c.8.